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CENTRE OF ENFORCEMENT EXPERTISE

DEPARTMENTAL ENFORCEMENT STANDARDS *Desk Book*

April 2018

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Chapter I Transport Canada Enforcement

1.0 Foreword to the 2018 Edition

Transport Canada's (TC) mandate is to serve the public interest through the promotion of a safe, secure, efficient and environmentally responsible transportation system in Canada.

Effective oversight of regulated entities is a key part of TC's mandate and mission. The reduction of risks to life, property and the environment requires a robust, fair and nationally consistent enforcement program. Officers are on the frontlines in this important effort. They need the tools to do their jobs effectively.

This Desk Book is one such tool – an important source of information, guidance and direction for all TC employees involved in enforcement. It provides over-arching, departmentally-approved functional direction (in the form of policies, standards and guidelines) to support officers in their work. Its careful application will serve to strengthen TC's enforcement program and enable the Department to deliver on its core mandate of promoting a safe, secure and environmentally responsible transportation system.

The publication of the 2018 Edition of the Transport Canada Enforcement Standards, continued to rely upon the feedback from the Multimodal Oversight Enforcement Foundations (MOEF) training; review and updates of relevant case law and the ongoing addition of supplemental materials.

Noteworthy in this edition are chapters on the use of Cautions and Warnings as well as enhancements to the Communications Protocol for enforcement matters.

The Desk Book is intended for the use of Transport Canada's enforcement community. The Centre welcomes feedback and suggestions from the Department's enforcement staff in order to enhance the relevance and effectiveness of the Desk Book and its application in TC's enforcement activities.

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Chapter I Transport Canada Enforcement

1.1 Message from ADM Safety and Security

Safety and Security Enforcement

The responsibility to support effective safety and security enforcement is a shared responsibility for all of us engaged in oversight and enforcement at Transport Canada (TC). Whether it is the detention of a vessel in Canadian waters, the monitoring of dangerous goods throughout Canada or the supervision and monitoring of aviation activities, enforcement is a critical part of our work involving every mode, every regional office and every TC inspector.

Setting meaningful rules and standards is only the first step. We also need to oversee these rules and standards and take action when we find non-compliance. How we take appropriate action to encourage, support and in certain cases compel compliance with those rules is a vital part of the process. Enforcing these rules is another part of how we serve Canadians.

The Departmental Enforcement Standards, also known as the “Desk Book” is a compendium of standards, best practices, guidance and direction on how to undertake effective enforcement actions. Since its initial publication, it has had a very positive reception and now enjoys a prominent place in how TC plans, undertakes and delivers enforcement.

The Centre of Enforcement Expertise (Centre) developed this tool to promote purposive, balanced and effective enforcement. The chapters are organized to support enforcement officials in the exercise of their authorities and discretion and to help guide managers in their enforcement planning.

While the Desk Book does not provide an authoritative answer to every scenario faced by enforcement officers or managers, it does provide the standards and guidance that should apply in most instances. For those situations where the Desk Book is silent, please refer your questions to the Centre. Where there is a conflict between the Desk Book and modal practices or procedures, the Centre advice shall prevail.

We welcome all TC staff in embracing this tool and participating in its evolution and improvement over time. We also encourage staff to continue to assist the Centre to reflect the exceptional diligence, dedication and commitment to effective safety and security that characterizes TC’s enforcement community.

Lori MacDonald
Assistant Deputy Minister
Safety and Security

Aaron McCrorie
A/Associate Assistant Deputy Minister
Safety and Security

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Chapter I Transport Canada Enforcement

1.2 Role of Desk Book

The Desk Book serves as the repository for best practices, national standards and guidelines to enhance consistency in how Transport Canada's (TC) enforcement program is understood and applied. The Desk Book is available to all interested TC employees, but is of particular importance to enforcement personnel who are guided by its provisions.

Current enforcement training and guidance material found in each of TC's programs is to be reviewed in light of the Desk Book. In the event of inconsistencies between the requirements of the Desk Book and modal program documentation, the Desk Book takes precedence. It is recognized that the process of change from current practices to Department-wide standardized approaches will take time. Amendments, clarifications and additions to the Desk Book will be issued as this process unfolds.

The Desk Book has five Chapters:

- Chapter I Transport Canada Enforcement
- Chapter II Legal Processes, Practices and Standards
- Chapter III Organization and Administration
- Chapter IV Source Documents/Reference Material
- Chapter V Forms and Templates

The types of documents provided in the Desk Book are defined as follows:

Policies: Formal direction that imposes specific responsibilities on departmental programs and officers. Policies explain what these programs are expected to achieve.

Standards: A set of operational or technical measures, procedures or practices that provide more detailed information on **how** managers and functional area specialists (including officers) are expected to conduct certain aspects of their duties.

These definitions are derived from the [Foundation Framework for Treasury Board Policies and the Safety and Security Program Policy Framework](#).

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1.3 Transport Canada Enforcement Oversight

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TITLE

Transport Canada Enforcement Oversight

SUBJECT

Transport Canada (TC) enforcement authority has its source in statutes passed by the Parliament of Canada and in regulations made under those statutes by the Governor in Council or by the Minister of Transport. Those statutes are listed in Annex A.

Enforcement is one tool that TC employs to support its overall strategic directions. Enforcement is an operational activity supporting Strategic Outcome Number Three: A Safe and Secure Transportation System¹.

The Safety and Security Group has articulated standards for how enforcement activities are to be conducted, consistent with Strategic Outcome Number Three. That approach – ***The Accountable Enforcement Cycle***, is illustrated below and is a foundation of the Desk Book.

¹ Program Alignment Architecture – 2016-17, RDIMS [11121146](#)

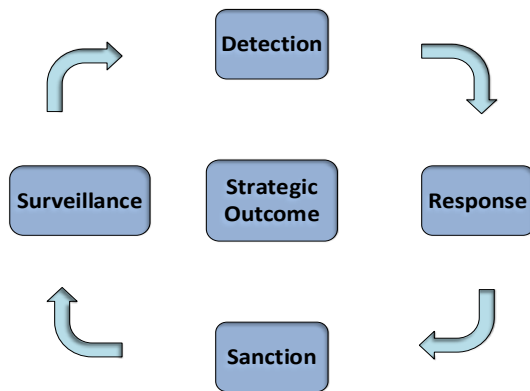
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The Accountable Enforcement Cycle



Desk Book Enforcement Standards

- Immediate Harm/Threat reduction
 - Risk Assessment
 - Notices/Orders
- Enforcement Response
 - Graduated Response
 - Structured Decision support tool
 - Instrument & Penalty Selection
- Common Notice of Violation
- Documented record and database of enforcement decisions

ACCOUNTABLE ENFORCEMENT CYCLE - DETECTION

1. The accountable enforcement cycle really has no beginning or end point – it is continuously operating. An individual violation or safety event can be said to start with its detection and immediately upon detection, whether from a third party, a routine or planned inspection the process starts with the documentation and determination of what is being observed. Could it be contrary to the provisions of the regulations or rules in place? Could it as well be dangerous or an imminent threat?
2. Very quickly upon detection TC officers are called upon to make important decisions, many times on incomplete information. What is the response to the non-compliant and perhaps unsafe behavior?

ACCOUNTABLE ENFORCEMENT CYCLE – IMMEDIATE HARM REDUCTION

3. It is the policy of TC that it's where it discovers the risk of immediate harm, that the primary responsibility is to address the immediate harm first, and only when that harm is addressed do proceed to develop an appropriate enforcement response. The standard for how to respond to risks of Immediate Harm is set out in [Chapter 2.1 – Standard on Immediate Harm Reduction Policy – Risk Assessment Tool](#). The specific steps that officers are expected to carry out conducting the response to the risk of immediate harm and the form of the notices officers are expected to employ in those circumstances are detailed in [Chapter 2.2 – Immediate Harm Reduction – Notices and Orders Preparation](#).

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ACCOUNTABLE ENFORCEMENT CYCLE – RESPONSE

4. Once any immediate harm has been addressed, then officers are expected to apply a systematic, structured approach to establishing the appropriate enforcement response to the non-compliance. This means assessing the evidence related to both the event and the operator/actor. The approach is governed by the applicable statutory and regulatory requirements. [Chapter 2.3 – Standard on Instrument and Penalty Selection – Graduated Approach](#) guides officers step by step through evaluating the seven standard factors that contribute to both identifying the appropriate form of response (from counseling to prosecution) as well as recommending an actual penalty amount where the preferred enforcement response is an Administrative Monetary Penalty.
5. It also requires the documentation in a common format, to be saved in an electronic form of the information collected, the decision process to support the enforcement response and the proposed penalty. Still in the development and pilot stage this “form” is called the Common Notice of Violation.

ACCOUNTABLE ENFORCEMENT CYCLE – SANCTION

6. Where the enforcement response has been determined and the penalty amount reviewed, the information documented in the preparation of the Common Notice of Violation will remain available for future review, and analysis. It will as well be the basis for the creation of the actual Notice of Violation to be served on the offender and will form the basis for disclosure provided to the offender. It also forms the basis for the preparation of the full Report to Crown Counsel should the matter proceed to prosecution. [Chapter 2.4 - Notices of Violation Preparation](#) details the specifics of how the actual notice is prepared.
7. The Notice of Violation which contains the relevant information sufficient to serve on the offender or be provided as disclosure or initiate the prosecution Report to Crown Counsel is retained electronically, as the information is inputted via an Adobe form. This form standardizes via drop down boxes all regulatory language, identifies available ranges for penalties and provides an analytical tool to rate and propose an appropriate penalty. All this data is retained and forms the basis for regional, modal, programmatic analytics.

ACCOUNTABLE ENFORCEMENT CYCLE – EVALUATION

8. When the information captured through the common Notice of Violation is reviewed and evaluated along with other surveillance and monitoring information and assessed along with

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reports from the TSB, the region, mode or program will be in a position to assign upcoming resources based upon evidence and based upon true risk analytics to determine where best to deploy future enforcement resources. Indeed this operational activity when viewed as a cycle, can be subject to a much higher frequency of review. The cycle itself captures regional, modal and national data permitting effective resource allocation to areas of greater safety and security concern in addition to the requirement to react to immediate risks. It is the basis for evidence and risk based enforcement.

DUTIES AND RESPONSIBILITIES OF OFFICERS

9. TC officers exercise authorities conferred upon them by Parliament pursuant to statutes governing transportation safety and security. This authority may be conferred directly, through the direct appointment of the officer pursuant to an authorizing provision in the statute.
10. Each statute lists the specific authorities that persons designated as officers may employ for the purposes of ensuring compliance, including the authorities to enter premises (other than dwelling houses), ask questions, make copies, take photographs and examine documents or reports relevant to their objectives.
11. While TC sometimes differentiates between two types of procedures to be followed in conducting an investigation (penal or administrative), this distinction is not found in any statute. Where however, an enforcement officer exercises authority to proceed by way of summary conviction, the authorities and procedures contained in the *Criminal Code* provisions related to summary conviction procedures (*Criminal Code* Part XXVII – Summary Conviction) must be followed and any legal process must thereafter rely upon the provisions of the *Criminal Code* (Part XXVII - Summary Conviction) in the pursuance of the file and not the provisions of the statute unless otherwise specifically provided for by the statute.
12. It is the exercise of the discretion of the enforcement officer that determines whether the enforcement action is penal or whether it remains administrative in nature, except where the discretion is ousted as for example under the *Aeronautics Act*, where a breach of a designated provision cannot be proceeded with as a prosecution. As discussed in Chapters 2.0 to 2.5, this exercise of discretion then dictates the type of tools available to the officer for the investigation and type of penalties to be sought.

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ANNEX A

[Aeronautics Act](#)

[Arctic Waters Pollution Prevention Act,](#)

[Bridge to Strengthen Trade Act](#)

[Canada Marine Act](#)

[Canada Shipping Act, 2001](#)

[Canada Transportation Act](#)

[Civil Air Navigation Services Commercialization Act](#)

[Coasting Trade Act](#)

[Department of Transport Act](#)

[International Bridges and Tunnels](#)

[Marine Liability Act](#)

[Marine Transportation Security Act](#)

[Motor Vehicle Fuel Consumption Standards Act](#)

[Motor Vehicle Safety Act](#)

[Motor Vehicle Transport Act](#)

[Navigation Protection Act](#)

[Pilotage Act](#)

[Preclearance Act](#)

[Railway Safety Act](#)

[Safe Containers Convention Act](#)

[Secure Air Travel Act](#)

[Shipping Conferences Exemption Act](#)

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ENFORCEMENT POLICY

Centre of Enforcement Expertise
February 2017



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DISCLAIMER

This document is an administrative document that is intended to inform Transport Canada officials, the public and regulated entities about the management of enforcement programs delivered by Transport Canada and its overarching principles. This document is not intended to provide legal advice nor does it constitute part of the Transport Canada's legislative/regulatory framework. In the event of any inconsistencies or conflict between the legislation and/or regulations and this document, legislation and/or the regulations will take precedence.

CONTEXT

The safety, security, efficiency and the environmental protection of Canada's transportation system is a top priority for Transport Canada (TC). Enforcement activities in all programs of transportation are a key element of Transport Canada's efforts to reduce risk to life, to protect property, the reduction of the environmental impact, and to support the continued efficiency and effectiveness of the national transportation system.

Departmental officials are responsible for the administration of statutes under the responsibility of the Minister of Transport. The Department works to achieve compliance nationally through oversight and enforcement authorities found in statutes and regulations.

Our enforcement officials adhere to TC enforcement standards and protocols – as found in the Desk Book – professional standards and expertise, the *Transport Canada Code of Values and Ethics* and the *Values and Ethics Code for the Public Sector*.

In dealing with colleagues inside the department and the wider enforcement community, our enforcement officials value collaborative relationships and consistent practices across all programs.

OBJECTIVES

The objective of this Policy is to achieve a consistent approach to enforcement in all programs to foster compliance and enhance the safety, security and efficiency of, and reduce the environmental impacts to the Canadian transportation system.

SCOPE

This Policy applies to all TC programs with mandates to enforce legislative and regulatory requirements related to the Acts found in Annex 1. The Enforcement Policy is part of a broader oversight framework and complementary to TC's Compliance Policy (under development), hence the requirement to keep this Policy updated on as needed basis as other related tools are available.

DEFINITIONS

TC standard "Definitions" are found in Chapter Four of the Desk Book.

GUIDING PRINCIPLES FOR ALL ENFORCEMENT PROGRAMS

The following principles guide the design and implementation of TC's enforcement programs:

1. **RISK-BASED APPROACH:** A safety, security, environmental and/or transportation efficiency risk may not always amount to non-compliance. Where such risk is identified, Transport Canada will use a clear process to identify, assess and forthwith endeavor to address the situation by using any and all appropriate risk mitigation responses available under legislation, irrespective of whether an enforcement action is later possible or appropriate. Risk mitigation responses vary according to authorizing legislation but generally include orders, directions, and the exercise of a seizure or grounding authority or the suspension of an operator or of an activity.
2. **GRADUATED APPROACH:** Enforcement responses should normally escalate in severity to achieve appropriate results according to applicable legislative and regulatory provisions and approved decision-making processes. Although statutory enforcement responses vary from one program to another, where there is potential for serious or irreversible harm, the enforcement measure will be swift, decisive and may immediately escalate to the full extent of available responses.
3. **FAIR, CONSISTENT, PREDICTABLE:** Actions shall adhere to accepted principles of natural justice and procedural fairness. Regulated entities will be informed in a timely manner of instances of non-compliance and of the enforcement action taken. Such actions will be applied consistently across Canada and in accordance with common standards and processes securely founded in law.
4. **TRANSPARENT:** In an effort to inform the public about the transportation industry's state of compliance and consistent with the Privacy and Access to Information Acts, Transport Canada makes information on enforcement actions available to the public. In some instances, for security purposes, this information is sometimes not available.

ENFORCEMENT RESPONSES – REQUIREMENTS

Identified and documented non-compliance may result in the application of an enforcement response. The availability of enforcement responses varies according to the statute being enforced but generally includes a selection of the following: warnings, various orders and directions, tickets, administrative monetary penalties, court injunctions, penal prosecutions and administrative sanctions up to the permanent suspension of a privilege. While being consistent with risk-based and graduated approach principles, the following factors will guide the determination of an appropriate enforcement response.

FACTORS CONSIDERED IN THE SELECTION OF AN ENFORCEMENT RESPONSE

1. **NATURE OF THE NON-COMPLIANCE:** This includes considerations of the seriousness of the non-compliance (low, moderate, high), the maximum penalty available by law, the context under which the non-compliance occurred, the degree of harm caused or potential harm, any risk mitigation measure previously applied, the degree of negligence or deliberate conduct.

2. **AVAILABLE RESPONSE UNDER APPLICABLE LEGISLATION:** Not all statutes are equal or offer the same enforcement response continuum. The appropriate enforcement response is to be selected from and grounded in the applicable legal framework.
3. **THE EFFECTIVENESS IN ACHIEVING THE DESIRED RESULT WITH THE VIOLATOR:** The desired results are safety, security, environmental protection, efficiency and compliance in the shortest possible time and with no further occurrences of non-compliance. Factors to be considered include assessing the violator's characteristics such as the history of compliance, the willingness to cooperate with Transport Canada officials, detection and reporting, evidence of corrective action taken and economic benefits to the regulated entity by not complying.
4. **CONSISTENCY IN APPLICATION:** Transport Canada aims to achieve consistency in the responses to non-compliances. Accordingly, the Department will consider how similar situations in Canada are being or have been handled when deciding what enforcement action to take.

ROLES AND RESPONSIBILITIES

The safety, security, environmental protection and the efficiency of the Canadian transportation system is a shared responsibility among government, industry and the public.

TRANSPORT CANADA OFFICERS AND MANAGEMENT:

The Enforcement Policy is a mandatory tool for all programs at Transport Canada to follow. It contains a set of guiding principles and factors intended to guide decisions and actions in the use of the department's legal powers. The Desk Book supports the implementation of this Policy by identifying mandatory requirements and provides appropriate standards/guidance on how to meet these requirements.

1. **OFFICER:** It is the responsibility of a TC officer to conduct enforcement activities in accordance with this Policy and to take proactive and timely action within the officer's authority. The officer should use the appropriate enforcement response, document and communicate promptly with regulated entities on decisions made in instances of non-compliance, and take the appropriate follow-up action(s). When in doubt or faced with a challenging situation, the officer must seek guidance from their line Manager.

Officers must understand the limits of the authorities available to them in the course of their duties, in particular by recognizing when Charter protections require them to relinquish the use of inspection powers in favor of cautioned statements and warrants.
2. **REGIONAL DIRECTOR GENERAL, DIRECTOR GENERAL, MANAGER AND OTHERS:** are responsible for oversight functions and must observe this Policy and related documents (see References Section). When in doubt or faced with a challenging situation the RDG, DG and other individuals who play a supervisory role must seek guidance from the TC Legal service unit.
3. **EXECUTIVE DIRECTOR OF THE CENTRE OF ENFORCEMENT EXPERTISE:** is responsible for the continuous monitoring and review of departmental enforcement functions and activities to assess their degree of alignment with the directives and standards that give effect to the guiding principles of the Enforcement Policy.

APPROVED AND EFFECTIVE DATE

Transport Canada's Enforcement Policy was approved by Transport Management Executive Committee (TMX) in February 2015 and came into force at that time. TC's Enforcement Policy was reviewed in October 2016 and subsequently reapproved in February 2017.

MONITORING AND REVIEW

The Director General, Multimodal Strategies and Program Integration is responsible for the review of this policy and its alignment with associated documents. The Enforcement Policy shall be reviewed every two years.

REFERENCES

Centre of Enforcement Expertise - Departmental Enforcement Standards
(RDIMS: #[10546608](#) / SGDDI: [10677979](#))

Enforcement Response – Communication Policy
(RDIMS: #[10952495](#) / SGDDI: [12562179](#))

Transport Canada Directive on Safety and Security Oversight (RDIMS:
#[8038503](#) / SGDDI: [9119412](#))

ENQUIRIES

The Executive Director, Centre of Enforcement Expertise is responsible for responding to all enquiries regarding this Policy.

[Aeronautics Act](#)
[Arctic Waters Pollution Prevention Act, 1985](#)
[Bridge to Strengthen Trade Act, 2012](#)
[Canada Marine Act, 1998](#)
[Canada Shipping Act, 2001](#)
[Canada Transportation Act, 1996](#)
[Civil Air Navigation Services Commercialization Act](#)
[Coasting Trade Act, 1992](#)
[Department of Transport Act](#)
[International Bridges and Tunnels, 2007](#)
[Marine Liability Act, 2001](#)
[Marine Transportation Security Act, 1994](#)
[Motor Vehicle Fuel Consumption Standards Act, 1985](#)
[Motor Vehicle Safety Act, 1993](#)
[Motor Vehicle Transport Act, 1985](#)
[Navigation Protection Act, 1985](#)
[Pilotage Act, 1985](#)
[Preclearance Act, 1999](#)
[Railway Safety Act, 1985](#)
[Safe Containers Convention Act, 1985](#)
[Secure Air Travel Act](#)
[Shipping Conferences Exemption Act, 1987](#)
[Transportation of Dangerous Goods Act, 1992](#)

NOTE:

The Minister of Transport is responsible for the administration of the statutes listed above. In some instances, notably with respect to enforcement of the Canada Labour Code, Transport Canada has entered into Memoranda of Understanding which provides further operational guidance on how these requirements are to be enforced.

While not an exhaustive list, the general enforcement provisions contained in these statutes include the powers of enforcement officers; rules governing detention, statements, warrants, entry, and search and seizure; and the suspension of a certificate or license.

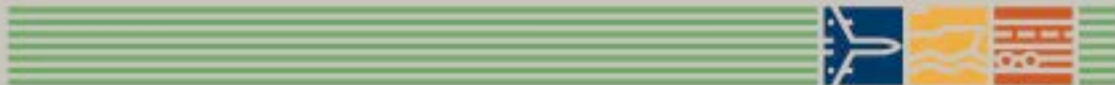
Document Control

Version	Date	Reason
1	February 15, 2015	Policy approved by TMX
2	February 2017	Policy revised and approved by Enforcement Coordination Committee



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INTERNAL ENFORCEMENT COMMUNICATION AND COLLABORATION POLICY AND MATRIX

Centre of Enforcement Expertise
November 2017



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PURPOSE OF THE POLICY

This policy guides Transport Canada officers and managers in facilitating communications and collaboration during the course of enforcement related activities.

It does not replace existing modal requirements to inform, notify or consult with senior management on incidents, accidents or events. It is narrowly focused on those ENFORCEMENT ACTIONS which should be brought to the attention of senior management.

Responses to incidents, accidents or transportation events must continue to be briefed up to senior management, regardless of whether an enforcement action is taken. Indeed, on many occasions, transportation incidents, accidents and events do not attract any enforcement action and in many situations, enforcement actions follow the actual incident, accident or event by many weeks or months.

This standard ensures that significant ENFORCEMENT ACTIONS are communicated to senior management, but unlike incident, accident or event responses, the communication is focused on the actual enforcement response. **It does not affect or in any way alter the legal authorities pursuant to which an officer takes an enforcement decision.** It standardizes communication processes as part of enforcement activities to provide the right information at the right time to the right officials. The decision making of officers on enforcement responses varies by mode and this standard does not alter those processes.

This policy does not provide guidance on when to notify TC's internal Communication group as a result of an event having gained – or having the potential to draw -- media attention. Modes are directed to refer to departmental standards in this regard.

This standard does however, impose on the Centre the responsibility to confirm that modes have followed their modal policies on communications with senior management, in order to ensure that any subsequent enforcement action has followed modal enforcement processes.

POLICY STATEMENT

This policy supports the principles of consistency and predictability in the Transport Canada Enforcement Policy (RDIMS [#8952191](#)) describing effective communications and collaboration practices during enforcement activities. Failure to consult or inform in accordance with this document does not affect the validity of the enforcement response taken.

SCOPE OF THE POLICY

All Officers/Managers/Directors/DGs/RDGs are expected to follow this policy in relation to enforcement related activities.

DEFINITIONS

Information: communications which convey information on an enforcement response prior to it being taken (i.e. proposed, decision pending).

Consultation: communications with supervisors or specialist on the enforcement response and investigative activity under consideration.

Notification: communications with other Transport Canada officials advising that an enforcement action has been taken.

GUIDING PRINCIPLES / REQUIREMENTS

Depending on the risk of immediate harm to safety, security and the environment or the significance of an enforcement response, officers are expected, consistent with modal communications policies and processes to communicate with other Transport Canada officials and Legal Services counsel in a timely manner. Communications among Transport Canada officials on a particular file could be subject to disclosure and that caution should be taken in the nature of that communication.

Officers should document communications with other Transport Canada officials in accordance with [Chapter 2.7.4 Standard on Officer Note Taking](#).

SPECIFIC CIRCUMSTANCES

1. **Immediate Threat to Safety, Security or the Environment:** At any time, an officer may determine during the course of his or her duties that a situation exists that meets the threshold of immediate threat to safety, security or the environment. As described in [Chapter 2.1 of the Desk Book – Standard on Immediate Harm Reduction – Risk Assessment Tool](#), the officer may exercise his or her legislative authorities to resolve the threat and to follow the terms of this communications policy in dealing with other departmental officials and documenting the communications.
2. **Immediate Penal Investigation:** During an inspection, circumstances may require an officer to make an immediate decision to conduct a penal investigation. [Chapter 2.5 of the Desk Book – Standard on Transitions – Safety, Security & Environmental Concerns, Inspections](#)

[and Investigations](#), describes the process to be undertaken by an officer in making that decision, including any necessary communications which must occur.

3. **The Assistant Deputy Minister** Safety and Security MUST be informed by the appropriate Director General when:
- a. Pursuant to the terms of [Chapter 2.3 of the Desk Book Standard on Instrument and Penalty Amount Selection](#) the recommended enforcement instrument is:
 - i. a prosecution by way of summary conviction or on indictment; or
 - ii. a removal of a certification or authorization (other than medical) could have a significant negative impact on the regulated entity.
 - b. The event under inspection or investigation has any of these elements:
 - i. Death or serious injury requiring medical attention.
 - ii. Moderate to high levels of property damage.
 - iii. Moderate to high levels of environmental damage.
 - iv. Short to mid-term decrease in trade volume and investment.
 - v. Loss of public confidence.
- NOTE: It is assumed that by the time that an incident, accident or event has reached the point at which an enforcement action is being considered, that it will have already been communicated to the ADM Safety and Security. Notwithstanding this, when the CEE is consulted by the modes, it will ensure that its involvement is communicated to the ADM Safety and Security.*
- c. Legal Services counsel have advised that the proposed enforcement action would entail a legal risk at any level from medium/moderate to high.
 - d. A regulated entity's certification or authorization (other than medical) is reinstated after being removed.
 - e. A Case Report recommending a prosecution is submitted to the Public Prosecution Service of Canada.
 - f. foreign, provincial or municipal jurisdictions are involved.
 - g. Two or more federal government departments/agencies are involved (i.e. Transport Canada and at least one other department/agency).

It is expected that appropriate internal communications policies are established to advise the appropriate Regional Directors' and Modal Director Generals' to permit effective communications with the Assistant Deputy Minister, Safety and Security.

Where there is an enforcement response (as distinct from an incident, accident or event) the matrix below will apply, even though modal (Line or Functional) authorities may have already informed or consulted with Senior Management.

SIGNIFICANT ENFORCEMENT ACTIVITIES & RESPONSES MATRIX

	SIGNIFICANT ENFORCEMENT ACTIONS	REGIONAL LINE AUTHORITY	FUNCTIONAL AUTHORITY	OTHERS: CEE, LSU, ADM, PPSC
Inspections and Administrative Investigations	Incidents, accidents, property or personal injury or merely the discovery of non-compliance without harm where there is a significant enforcement response ¹ .	Line Manager, Regional Director, Regional Director General follow modal policies on communication and provide information on the incident, accident and/or enforcement action.	Enforcement Chief, Director, Director General follow modal policies on communication and provide information on the incident, accident and/or enforcement action.	In accordance with Desk Book, CEE is to consult LSU and PPSC on penal enforcement matters. CEE to also confirm notification of ADM.
	RAILWAY SAFETY ACT: Issuance of AMP against corporation following RSA Enforcement Manual RDIMS [insert number].	Investigates and provides recommendations to HQ functional authority. Region is not the decision maker.	Decision maker is the Functional Director General. DG informs ADM.	CEE generally not consulted.
	CANADA SHIPPING ACT, 2001: Issuance of AMP or Assurance of Compliance against corporation following CSA 2001 Enforcement Manual RDIMS [insert number].	Investigates and is the ultimate decision maker but is required to consult HQ for quality assurance and review.	HQ reviews for consistency and supports regional decisions on issuance of either AMP or Assurance of Compliance.	CEE generally not consulted.
	AERONAUTICS ACT (Civav): Issuance of AMP against corporation under authority following Staff Instructions 103.001 RDIMS [insert number].	Decision maker is the Regional Manager except for 705 operations that come under national oversight. May consult with HQ to ensure consistency.	Decision maker is the Chief of enforcement for all 705 operations that come under national oversight (AC, Jazz, WJ, AT, Sunwing, Navcan).	CEE generally not consulted.
	ALL MODES AND STATUTES: Decision to initiate penal investigation.	Region is the ultimate decision maker but is required to consult HQ.	HQ functional authority is consulted by region and must also consult the CEE.	CEE will confirm ADM notification.
Penal Investigation	ALL MODES AND STATUTES: Applying for Cr. Code search warrant or production order.	Region is the ultimate decision maker but is required to consult HQ.	HQ functional authority is consulted by region and must also consult the CEE.	CEE to inform LSU and consult PPSC.
	ALL MODES AND STATUTES: Recommendation to PPSC for Prosecution.	Region is the ultimate decision maker but is required to consult HQ.	HQ functional authority is consulted by region and must also consult the CEE.	CEE to consult LSU and PPSC. CEE will confirm ADM notification.

¹ Other enforcement responses such as warnings and various orders and directions may be communicated to senior management following modal policy. Below are enforcement actions of significance where decision making involves both regional and functional authority. Also excluded from the Matrix are certificate actions as such generally only apply pursuant to the *Aeronautics Act*.

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TITLE

Standard on Access to Centre of Enforcement Expertise (CEE) Advisory Services

SUBJECT

The primary role of the CEE is to provide timely and effective expert advice on all matters related to enforcement. To best offer this advice, it is important that it is requested, tracked and provided in accordance with well-articulated standards. This standard describes when advice should be sought, may be sought and by whom it may be sought. It also sets out how the CEE will document the request, prepare the response and the time frames it will be provided.

Transport Canada (TC) officers who encounter or observe or are informed of non-compliant behaviour which is actively and currently either posing a threat or causing harm or a threat of harm, as defined in the applicable legislation, have the authority, and in some cases are required, to act. To do so, they may have an immediate need for timely advice. This is an important consideration in the provision of the advice.

TC officers may also encounter situations or events that give rise to safety, security or environmental concerns that do not clearly demonstrate non-compliant behavior, either because of a lack of information or evidence. In those situations as well, TC officers may act where the statutes authorize intervention to prevent the risk of harm from arising or to prevent existing harm from escalating. This may equally give rise to a need for timely advice.

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At the same time some operational enforcement actions may require significant planning and preparation which could on occasion require a request for assistance from the CEE which may have longer time frames (e.g. support for a production order or search warrant, etc.).

In each of these situations, this standard guides the provision of the right advice at the right time to the right persons.

PURPOSE AND SCOPE

The purpose of the Standard on Access to CEE Advisory Services is to assist TC officers in obtaining the assistance of the CEE advisory services in relation to operational matters, in the most expeditious and effective manner, recognizing the issues of timeliness, consistency and coordination of advice.

The CEE will use its resources as effectively as possible to meet the standards described below to ensure that consistent advice is communicated to all necessary parties in as expeditious a manner as is possible in all of the circumstances.

Only in exigent circumstances will the CEE provide advice without engaging as completely as possible, the necessary enforcement team members (i.e. front line inspector, supervisor and/or manager) before providing advice and in the rare circumstances that this might occur, the CEE will ensure that all necessary enforcement team members are fully engaged as quickly as possible after the exigent circumstances have been addressed.

POLICY STATEMENT

It is the policy of TC that its officers, when carrying out enforcement responsibilities, may request at any time the assistance of the CEE in accordance with the terms of this standard.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. TC officers have the responsibility and duty to enforce the statutory and regulatory requirements of the statutes and regulations for which they have been authorized and to take certain steps to respond to “threats”, “risks” and “harm” when the threat, risk or harm is “immediate”, “imminent” or indeed present. These actions are designed to immediately reduce the harm, or risk of harm or threat.

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2. TC officers also have enforcement responsibilities associated with their statutory authorities related to the conduct of inspections and investigations which may involve the selection of the most appropriate enforcement instrument or penalty amount – as set out in Chapter 2.3 – Standard on Instrument and Penalty Selection.
3. During the course of the exercise of their harm reduction and enforcement authorities, TC officers may encounter administrative or penal enforcement questions or issues of a technical nature, many of which are detailed in the Desk Book.
4. In any circumstance arising from decisions related to Harm Reduction, Enforcement or technical issues related to these, TC officers may request advice and support from the CEE.
5. Advice requested from the CEE will always be provided in accordance with service standards related to timeliness.
6. Advice from the CEE will always be documented. It should be noted that advice received from, and communication with, the CEE may be disclosable as it is not protected by privilege.
7. Advice from the CEE, absent exigent circumstances, will be shared with the originator, his or her manager or supervisor and once provided may be shared, within the absolute discretion of the CEE, as broadly as is deemed appropriate, having regard to any applicable legislative prohibitions or operational concerns (e.g., confidential sources).
8. Advice received from the CEE will always be case specific and limited to the facts and information presented to the CEE in the request for advisory services.
9. Advice received from the CEE will be operational or interpretative in nature and should not be construed as the expression of a legal opinion, which is the exclusive purview of the Department of Justice.
10. Responsibility for harm reduction or enforcement actions undertaken following the request for advisory services, and the provision of those services continues to rest exclusively with the modal authorities delegated or authorized under legislation to take those actions.

ROLES AND RESPONSIBILITIES

11. Officers are responsible for:
 - a. preparing the request for advisory services in as succinct and detailed a manner as is possible in the circumstances including as much information as is available;

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- b. ensuring, except in exigent circumstances, that supervisory or management personnel are given the opportunity to participate in the formulation of the request; and
 - c. initiating the contact directly with the CEE by whatever means, preferably via an email contact with as much information provided to the CEE.
12. Managers are responsible for:
- a. ensuring that they are informed about the request for advisory services and available, where desired, to participate in the consultation with the CEE; and
 - b. ensuring that, where modal or regional communications protocols apply, those protocols have been followed. (Note: The CEE does not impose any communications process obligations on a Request for Advisory Services other than those set out in this standard;
 - c. determining the degree to which the manager needs to continue to be engaged in the consultation; and
 - d. receiving the results of the consultation and where necessary, conducting such follow up as may be appropriate in the circumstances.
13. The CEE is responsible for:
- a. receiving and documenting the request for Advisory Services within defined service standards based upon the urgency of the request, which may include operational or exigent considerations;
 - b. ensuring that any request for advisory services is dealt with only with the knowledge of the originator's manager or supervisor, unless exigent circumstances exist (Note: The CEE will give advice even in exigent circumstance without manager or supervisor advance knowledge but will always ensure that the appropriate manager or supervisor is copied on any advice);
 - c. providing written or electronic copies of any and all advice provided to the originator and his or her supervisor within defined service standards based on the urgency of the request; and
 - d. documenting the advice provided and maintaining a record of the consultation for future reference.

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1.7 Centre of Enforcement Expertise Contacts

TITLE

Centre of Enforcement Expertise Contacts

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TITLE

Transport Canada Enforcement Practices

SUBJECT

The definition of Transport Canada oversight is:

Activities that support the systematic promotion, monitoring, or enforcement of compliance with Transport Canada requirements governing safety or security and that contribute to departmental strategic outcomes.

Safety and security of transportation is supported when participants adhere to the standards in the form of rules and regulations that describe what is expected of all participants in their transportation activities. Participants are expected to be in compliance with these standards at all times, and when not in compliance Transport Canada (TC) exercises its responsibility to encourage and compel them to return to compliance. Analogous to the responsibility of all citizens to be in compliance with the provisions of the *Criminal Code*, the standards for safe and

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secure transportation are supported by TC enforcement officers and the authorities granted to them to intervene to support safety and security through compliance.

The exercise of those authorities is purposive, evidence-based and balanced.

PURPOSE AND SCOPE

The purpose of this standard is to assist TC officials in exercising their discretion to determine how to respond to a situation which may require Immediate Harm Reduction and/or Enforcement Sanctions.

This applies to all TC personnel exercising their enforcement responsibilities in pursuance of their duties relative to any TC statute and/or regulation.

POLICY STATEMENT

It is the policy of TC that its officials, when carrying out enforcement responsibilities, do so in accordance with the statutory authorities and duties applicable to the functions being carried out. Where and when actual harm is present or a threat to safety or security is reasonably foreseeable, enforcement officials will exercise their discretion to immediately reduce the harm or threat to safety or security as quickly as is reasonably practicable in the circumstances.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. TC enforcement officers are called upon to respond to events which may at once be both non-compliant as well as pose threats to safety and or security. Enforcement officers are authorized by legislation to act in order to reduce the harm and also to address the underlying non-compliant behavior through enforcement sanctions.

The primary obligation of enforcement personnel is to seek to reduce real or potential harm. Only after real or potential harm is reduced do enforcement officers turn their attention to the development of the case to sanction.

ENFORCEMENT AUTHORITIES

2. TC statutes provide a range of tools that may be employed by TC officials in enforcement matters but only where authorized to do so. In some cases this requires specific

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designations by the Minister pursuant to the statute (i.e. *Railway Safety Act*). In other cases, the statute only refers to the Minister undertaking the enforcement activities (*Aeronautics Act*), in which case TC officials must assure themselves that they have the appropriate authorizations to exercise the powers of enforcement on behalf of the Minister.

3. Enforcement as discussed below includes taking steps to remedy non-compliance in the context of mitigating further harm, or ensuring immediate safety or security. While the “orders” or “directions” or directives used to reduce harm may closely resemble enforcement sanctions, they are imposed or issued not to deter future conduct but to remedy an unsafe situation or reduce harm. They are directed at harm reduction. Enforcement sanctions are directed to the regulated party or the operator to denounce their conduct and promote their individual and system-wide future compliance with safety standards.

DIRECTIVE ON SAFETY AND SECURITY OVERSIGHT

4. This chapter of the Desk Book is an expression of the Compliance and Enforcement Approach of the Transport Canada *Directive on Safety and Security Oversight*¹ (DOSSO). It puts into practical terms the following directions:

1. Emphasize the objective of our oversight activities: to foster a safe and secure transportation system in Canada;
2. Define clearly the difference between monitoring for compliance and enforcement (actions taken in response to instances of non-compliance);
3. Outline the spectrum of enforcement activities and the key factors that are to be used in determining an appropriate and consistent course of action, for example, impact, history, intent, aggravating factors, and extenuating circumstances; and
4. Align with integrated standards for compliance and enforcement.

TC ENFORCEMENT POLICY

Definitions

5. This chapter is consistent with the objective of the ***Transport Canada Enforcement Policy***, to “achieve a consistent approach to Transport Canada’s enforcement regime in all

¹ ***Transport Canada Directive on Safety and Security Oversight*** RDIMS: 8038503 (as amended), Part G - Requirements, Section 5 Compliance and Enforcement Approach.

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programs to enhance the safety and security of, and reduce the environmental impact of the Canadian transportation system.²

ENFORCEMENT DECISION FRAMEWORK

6. Enforcement officers are called upon whether during a routine inspection, or in attendance at an event, or upon the review of other relevant information, documents or evidence, to take a disciplined approach to making enforcement decisions, including decisions to address imminent or immediate threats to safety or security. The Enforcement Decision Framework, shown in Figure 1, below, illustrates the three step enforcement process decision.

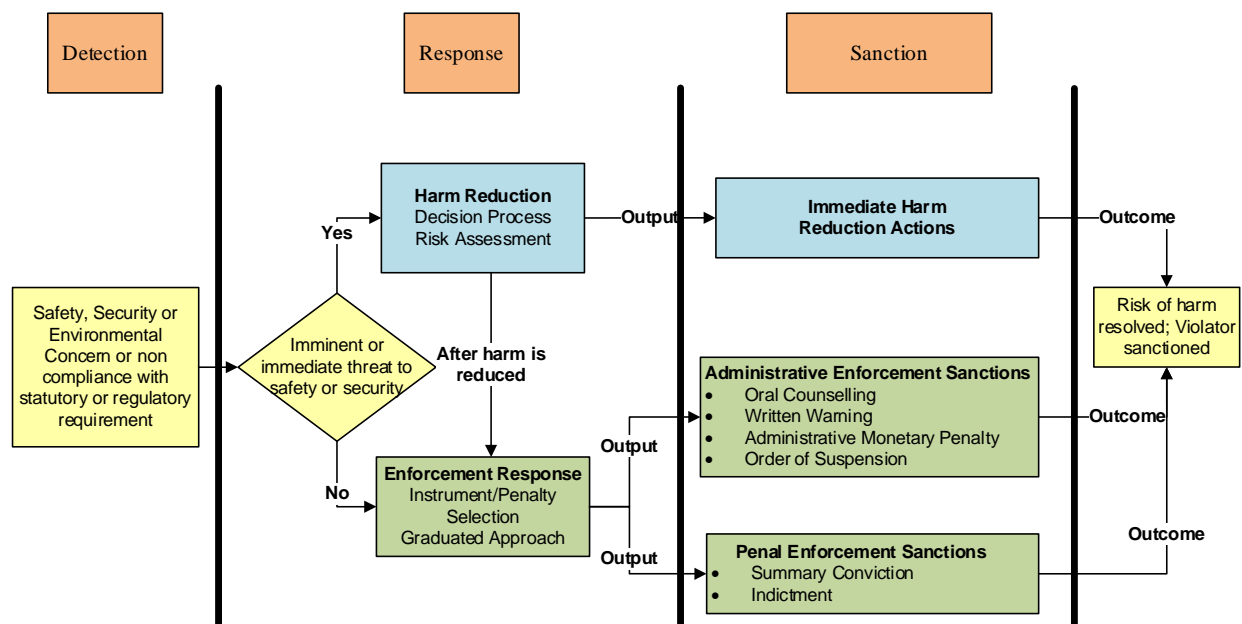


Figure 1 – Enforcement Decision Framework

Detection

7. The first steps taken by enforcement officers when they encounter a situation which discloses harm or a threat of harm arising from non-compliance with TC requirements governing safety or security are to determine what if any Harm Reduction steps need to be taken to address the real or potential harm. This is the "Detection" phase where the enforcement officer determines if there is a breach of a TC requirement by drawing upon his or her training,

² **Transport Canada – Enforcement Policy** RDIMS: 8952191 Chapter 1.4 of the Desk Book

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experience and knowledge to evaluate the information or observations made and make an assessment that a state of non-compliance has existed, or continues to exist.

Response

8. Based upon the assessment, the enforcement officer must determine if a situation presents itself that requires immediate action to reduce any existing harm or an immediate threat of potential harm. If there is no evidence of such harm or after the harm has been reduced, enforcement officers turn their attention to determining if an enforcement action (sanction) is required. In Figure 1, this decision is expressed in general terms as assessing whether there is:

Imminent or immediate threat to safety or security

Each TC statute formulates this test in slightly different terms. Chapter 2.1 of the Desk Book “Immediate Harm Reduction” details the step by step procedure that enforcement officers must undertake depending upon the specific terms of the authorizing statute.

Where the enforcement officer concludes that there is no imminent or immediate threat to safety or security and/or once the harm has been addressed, then the enforcement officer must undertake a second evaluation of the event to assess what, if any, enforcement sanction should be imposed. This decision making is detailed in a step-by-step process set out in Chapter 2.2 of the Desk Book “Enforcement Actions – Instrument and Penalty Selection”.

For these two critical decisions, enforcement officers must refer to these two Chapters to determine the steps necessary to both remedy any existing or potential harm, and afterwards undertake the processes necessary to undertake enforcement actions.

Enforcement Outputs

9. Where an enforcement officer concludes that a situation of imminent or immediate threat to safety or security exists, he or she has certain specific authorities available. These depend upon the authorizing statute, but they typically involve compelling the regulated party to cease the actions causing the harm, or to direct the party take specific actions which will result in the harm being stopped. These immediate authorities are extraordinary authorities and are generally used in emergency or urgent situations. They are designed to address the events causing the harm, rather than directed to the character or the nature of the regulated party. Whether the party has a history of non-compliance or not is a secondary consideration in

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immediate harm reduction decisions. If the harm exists or the threat of harm is present, then the authority should be employed.

The outputs of that decision are usually: Notices, Orders, Directions, Directives or license/certificate action based upon the terms of the authorizing statute. Such authorities are typically found only in the statutes themselves and are not likely to be based upon a regulatory requirement. Figure 1 shows examples drawn from TC statutes and the *Criminal Code*.

10. Where an enforcement officer concludes that the situation does not require immediate harm reduction actions to be taken, either because the actions already taken have addressed the harm or potential for harm, or because no harm or potential for harm exists, then the enforcement officer takes steps to complete his or her assessment of the event. This may involve a basic or extensive review of the event, leading perhaps to a full investigation. The outputs of assessment/inspection or investigation may then lead to enforcement sanctions. Figure 1 provides examples of the types of sanctions or penalties that could result from such an activity.

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2.1 Standard on Immediate Harm Reduction – Risk Assessment Tool

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TITLE

Standard on Immediate Harm Reduction – Risk Assessment Tool

SUBJECT

When Transport Canada (TC) officers encounter or observe or are informed of non-compliant behaviour which is actively and currently either posing a threat or causing harm or a threat of harm, as defined in the applicable legislation, officers are empowered and in some cases required to act. These actions are part of the Enforcement Process and are taken to address the immediate harm or risk of harm. Each statute provides specific thresholds for the exercise of these authorities. They are distinct from other enforcement authorities, and are utilized with a view to Immediate Harm Reduction or prevention of harm.

TC officers may also encounter situations or events that give rise to safety, security or environmental concerns where there is no clear non-compliant behavior, either because of a lack of information or evidence. In those situations as well, TC officers may act where the statutes authorize intervention to prevent the risk of harm from arising or to prevent existing harm from getting worse.

TC has the duty to protect the public from any immediate threat by compelling the regulated party to cease or remedy the activity immediately. This is a critically important part of the overall enforcement process because it is the duty that TC has for protection of the public. Failure to exercise this authority could be seen as a breach of this duty, the consequences of which could be significant. This Chapter should be read in conjunction with **Chapter 2.3** which details

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instrument and penalty selection options for dealing with enforcement where there is no requirement for immediate harm reduction.

The governing principle is that TC officers must address the need for immediate harm reduction as the first priority before other enforcement activities. The harm or potential for harm or threat to safety and security and environment must be addressed to the greatest extent possible before consideration of other enforcement actions.

PURPOSE AND SCOPE

The purpose of the Standard on Immediate Harm Reduction is to assist TC officers in exercising their discretion to determine how to respond to a situation requiring Immediate Harm Reduction, including preparation of necessary orders, directives and notices to address the threat or risk of harm to safety, security or the environment.

This standard applies to all TC officers exercising their enforcement responsibilities in pursuance of their duties relative to any TC statute and/or regulation.

POLICY STATEMENT

It is the policy of TC that its officers, when carrying out enforcement responsibilities, do so in accordance with the statutory authorities and duties applicable to the functions being carried out. Where actual harm is present or a threat to safety or security is reasonably foreseeable, TC officers will exercise their discretion to immediately reduce the harm or threat to safety or security as quickly as is reasonably practicable in the circumstances.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. TC officers have the responsibility and duty to enforce the statutory and regulatory requirements of the statutes and regulations for which they have been authorized and to take certain steps to respond to “threats”, “risks” and “harm” when the threat, risk or harm is “immediate”, “imminent” or indeed present. These actions are designed to immediately reduce the harm, or risk of harm or threat. They are part of TC’s enforcement responsibilities and some of the tools employed are similar to those employed by TC officers in situations not involving

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immediate risk of harm. Those authorities are typically statutory authorities, the most common of which are¹:

- a. *Aeronautics Act*, section 4.76
- b. *Railway Safety Act*, section 31
- c. *Canada Shipping Act, 2001*, sections 177 and 222
- d. *International Bridges and Tunnels Act*, section 17
- e. *Marine Transportation Security Act*, section 16
- f. *Navigation Protection Act*, sections 13, 15 and 16
- g. *Transportation of Dangerous Goods Act, 1992*, section 19

2. While each of the statutes contains authorities related to immediate harm reduction, they each employ language particular to their specific application.

The *Aeronautics Act* provides that where the Minister is of the opinion that there is “an immediate threat to” either “aviation security or to any aircraft or aerodrome...or to the safety of the public” then the Minister “may direct” or “make directions” to respond to the threat.

The *Canada Shipping Act, 2001*, provides that a marine safety inspector who believes on reasonable grounds that a vessel is not seaworthy or even that a contravention of a relevant provision has been committed, may make a detention order in respect of the vessel.

The *International Bridges and Tunnels Act* provides that where the Minister is of the opinion that there is “an immediate threat to the security or safety of any international bridge” then the Minister may “make directions” to respond to the threat.

The *Navigation Protection Act* provides that the Minister may order repairs, removal or alteration of works if they interfere more with navigation currently than at the time constructed or if the work is causing or is likely to “cause a serious and imminent danger to navigation”.

The *Marine Transportation Security Act*, provides that where the Minister has “reasonable grounds to believe” that a vessel is a threat to the security of any person or thing, the Minister may direct the vessel to take certain actions.

¹ Annex A in Chapter 2.2 contains the text related to each of these sections and other less frequently used authorities. Note that the following statutes do not have similar immediate harm reduction authorities: *Navigation Protection Act*, *Motor Vehicle Safety Act*, *Motor Vehicle Transport Act*, *Canada Marine Act*.

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The *Railway Safety Act* provides that a railway safety inspector who is of opinion that a person's conduct or anything for which a person is responsible constitutes a "threat to the safety or security of railway operations" may issue an order to address the threat.

The *Transportation of Dangerous Goods Act, 1992* authorizes an inspector, on belief on reasonable grounds, to direct or indeed take certain steps in relation to dangerous goods to prevent a release of dangerous goods which could endanger public safety or to reduce danger to public safety.

3. Each of these authorities is exercised by the officer considering three common criteria:

Actual harm – the directions are designed to respond to harm that is identifiable in concrete terms based upon the opinion of the officer or the reasonableness of grounds allowing the officer or Minister to conclude that harm will occur. It is immediate, quantifiable and fact-based.

Immediacy – the directions are designed to respond to harm that has actually occurred, or is imminent. It is harm that could occur if the underlying condition is left unaddressed; and

Public – the directions are normally for the benefit of the public. The TC officer or Minister is exercising this authority on behalf of the public good.

4. Each of the authorities exercised by the officer or the Minister is directed to the event and the harm occurring or which could occur and **NOT** to the person responsible. The legislative criteria do not include considerations of:

Compliance history of the person responsible for the event or transportation undertaking;

Intent of the person responsible for the event or transportation undertaking;

Mitigation, assistance to the regulator, economic benefit or reporting of the event by the person responsible for the event or the transportation undertaking.

The focus is on remedying the potential harm. The character, history or intentionality of the person who may be responsible for the harm or the risk of harm does not form part of the decision to cause the harm to be remedied. These factors will be taken into account should the matter proceed to enforcement and are described in **Chapter 2.3**.

5. In order to assess the risk, officers are expected to assess the information being presented by the event against two scales: **magnitude** of existing harm or risk of harm and the

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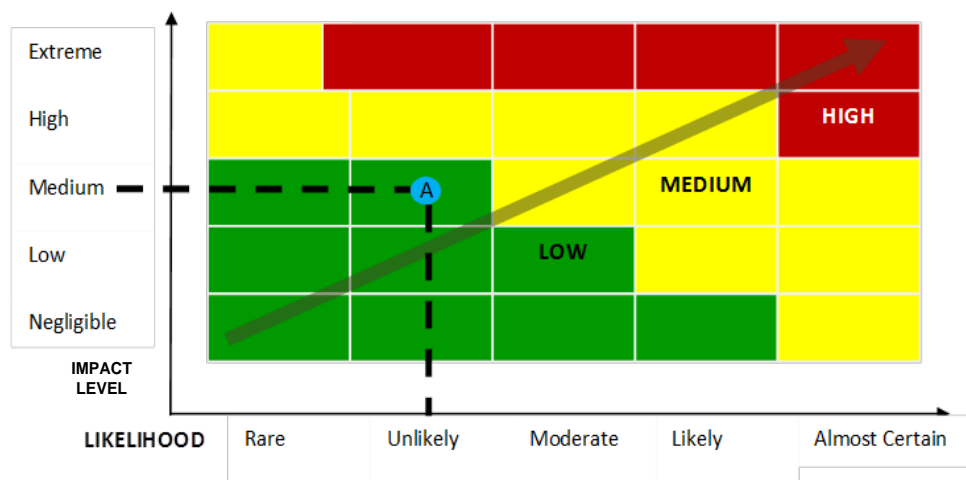
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likelihood of the existing harm or risk of harm occurring. Where the harm or risk of harm is already occurring, this assessment is relatively easy and where the consequences of the harm are evident, then the likelihood is also easy to establish as it exists. Where neither the harm nor the consequences are present, then assessment is more challenging. The officer is expected to assess the risk by considering these two scales: magnitude of existing or risk of harm and likelihood of the consequences occurring against the observations of the event. Such a Risk Assessment is established through the use of the TC Safety, Security & Environmental Concerns Risk Assessment Tool, sometimes referred to as a “heat map” shown below.



6. Using the risk assessment tool above, the officer establishes the risk on the heat map by locating the intersection between the assessment of the likelihood (Rare to Almost Certain) and the assessment of the impact (Negligible to Extreme). Intervention authorities provide response tools that correspond to the risk assessment. Where the assessment is high, then the response tool typically provides the authority to order the party to cease the activity immediately, and resolve the harm or risk. Where the assessment is medium, intervention authorities may provide for conditional continued operation where the safety security or environmental concern can reasonably be remedied. Where the assessment is low, then intervention authorities may provide for continued operation subject to subsequent remediation. Regardless the risk assessment rating, an officer may not permit the continued operation, where the risk remains unaddressed or unmitigated. The risk assessment is made independently of any consideration of enforcement actions.

7. Where the threat does not meet the threshold established in the legislation, and where there is non-compliant behaviour, the matter reverts to the normal process of enforcement and

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the officer is expected to follow the appropriate legislative authorities as well as the provisions in Chapters 2.0 – 2.5 as applicable.

8. Where the officer is of the view that there is still a threat to safety, security or the environment and the officer concludes that the threat does **not** meet the threshold for an order to immediately reduce the threat and where there is **no non-compliant behaviour**, then the officer may **not** have a sufficient basis for a statutory intervention because the criteria necessary for its exercise may not have been met. In such a circumstance the officer may wish to advise his or her supervisor of his concerns and may also wish to advise the National Situation Centre. Absent either a threat that meets the statutory threshold or non-compliant behaviour, there is no authority to act.

9. Once the officer or Minister has made the determination to exercise the Immediate Harm Reduction authority, a Notice or Order is issued and served or otherwise communicated to the regulated party. It informs the regulated party of the steps that the regulated party must take in order to comply with the Notice or Order. In each case, failure to comply with the Notice or Order is in and of itself a violation or offence which could occasion more significant enforcement consequences or actions.

10. The issuance of a Notice or Order for Immediate Harm Reduction does not prevent or foreclose other enforcement actions. In many cases, the breach that caused the need for a Notice or Order to Immediately Reduce Harm will also be a breach of the applicable legislation. Information obtained in the process leading to the determination to issue a Notice or Order for Immediate Harm reduction forms part of the inspection and investigation process. Any resulting enforcement action (Oral Counseling, Written Warning, Assurance Compliance, Administrative Monetary Penalty or Summary Conviction Offence or Indictable Offence) may be fully supported by the observations, data gathering and other inspection or investigative actions undertaken to arrive at the determination to issue a Notice or Order for Immediate Harm Reduction.

GENERAL PROCEDURES

11. The following are the steps a TC officer must take to proceed to the issuance and service of a Notice or Order for the Immediate Reduction of Harm pursuant to the authorities contained in the applicable statutes:

Step One: Identification of the specific statutory, regulatory or other authority alleged to have been violated by the regulated party.

Step Two: Identification of the actual, immediate harm or risk or threat of harm as set out in the terms of the statutory authority.

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Step Three: Identify who has the authority to issue the Notice or Order.

Step Four: Identify the exact legal test that must be met to justify the issuance of the Notice or Order. (i.e. “opinion of the Minister”, or “immediate threat”, or “considers it necessary” or “belief on reasonable grounds ... that the vessel is not seaworthy”).

Step Five: Prepare a brief description of evidence, observations or grounds sufficient to permit the exercise of the authority.

Step Six: Determine to whom the Notice or Order must be issued and how the Notice or Order will be communicated to them (e.g. service, electronic, verbal)

Step Seven: Prepare the Notice or Order in accordance with the provisions of the applicable statute and regulatory authority.

Step Eight: Cause the Notice or Order to be signed by the appropriate authority and communicated to the party.

ROLES AND RESPONSIBILITIES

12. Officers are responsible for:
 - a. preparing Notices or Orders in accordance with the provisions of the applicable statute and regulatory authority;
 - b. if required, consulting with applicable Centre of Enforcement Expertise modal liaison officer;
 - c. causing the Notices or Orders to be signed, issued and served on the alleged violator in accordance with the provisions of the applicable statute and regulatory authority;
 - d. seeking approval of the decision to issue the Notice or Order from the officer's supervisor.
13. Managers are responsible for:
 - a. ensuring that the Notice or Order as drafted by the officer conforms with the provisions of the applicable statute and regulatory authority;
 - b. consulting with the Centre of Enforcement Expertise and with the applicable Chief of Enforcement or equivalent, as appropriate; and
 - c. ensuring that notification of the Notice or Order is provided in accordance with applicable Transport Canada Notification procedures.

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TITLE

Standard on Immediate Harm Reduction Notices and Orders Preparation

SUBJECT

Responding to immediate harm or the threat of harm is based upon the informed decision of Transport Canada (TC) authorized officers. This response typically takes the form of a Notice or an Order being provided to the responsible party requiring them to take actions to resolve the risk. These decisions are taken by officers following the steps set out in legislation and

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following the Risk Assessment Tool as set out in Chapter 2.1 of the Desk Book. While preferable, and unless required by statute or regulation, Notices and Orders may be provided to parties verbally. The better practice is to provide them in writing, unless exigent circumstances require immediate action.

A Notice or Order to a regulated party to resolve immediate harm is focused on the event, rather than the party. Regardless of the characteristics of the party, or their history as a participant in the industry, where the harm or risk of harm is identified and where the harm or risk of harm conforms to the definition contained in the legislation, enforcement personnel have the authority and in many cases the duty to take steps to resolve the harm or risk of harm.

In its most basic form, the harm or risk of harm may very well be based on the violation of a Transport Canada rule, as expressed in statute or regulation, however, where there is a safety, security or environmental concern and no discernable non-compliant behavior has been identified, then officers must consider whether their specific authority permits them to take steps to resolve the harm or risk of harm.

As discussed below in the Detailed Procedures sections, taking action where safety or security are actually or potentially compromised even though the regulated party is in compliance with what would appear to be the applicable legislation is sometimes permitted. This authority is an extraordinary authority and is designed to address unanticipated risks to safety that cannot otherwise be dealt with using the standard enforcement and safety tools.

The primary consideration is the resolution or reduction of the harm.

This also does not preclude eventual sanction or punishment or enforcement action being taken against the party not in compliance. These are two separate activities. Immediate harm reduction is analogous to the Peace Officer “arresting” the offender, in order to stop the immediate harm from occurring, following which the Peace Officer may “charge” the person with an offence. These are separate activities.

The general rule is that Notices or Orders must be grounded upon what is the best available evidence to the decision maker and must provide sufficient detail to the person who receives it to allow the person to respond to the direction. In the better practice, it should also advise the party of the considerable consequences for non-compliance with the Notice or Order itself, so as to promote full compliance with the Notice or Order.

PURPOSE AND SCOPE

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The purpose of this standard is to assist TC officers in preparing Notices and Orders to be used when requiring a party to take steps to immediately reduce harm or the risk of harm, pursuant to specific legislative authorities.

This applies to all TC officers exercising their enforcement responsibilities in pursuance of their duties relative to any TC statute and/or regulation.

POLICY STATEMENT

It is the policy of TC that its officers, when carrying out enforcement responsibilities, do so in accordance with the statutory authorities and duties.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. TC officers have the responsibility and duty to enforce the statutory and regulatory requirements of the statutes and regulations for which they have been authorized and to issue and serve Notices and Orders to immediately reduce harm in accordance with the applicable authorities.
2. A Notice or Order to immediately reduce harm¹ is a document issued and served by the officer on regulated parties with either a responsibility or an ability to respond to a situation that has created harm which is continuing, or to a situation which it is reasonable to assume will create harm, in order to stop the harm from occurring or prevent the harm from occurring. It is not every situation that creates harm or the potential for harm that is susceptible to this approach. Annex A contains a table identifying by statute the legislation for the exercise of this authority. Unless the situation can meet the test set out in the legislation, these tools cannot be employed.
3. Generally an emergency or potential for imminent or immediate harm is required for a Notice or Order to be issued. This could be because harm is actually occurring or because harm is reasonably likely to occur. Only the *Railway Safety Act* provides any real legislative guidance on what would amount to a threat or an immediate threat. Subsection 4(4.1) of the *Railway Safety Act* defines threats and immediate threats as:

¹ The term "Notice or Order" is employed throughout, even though some legislation uses only the term Notice or Orders and some legislation employs "emergency directive" to refer to the same type of document.

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Threats and immediate threats

4 (4.1) For the purposes of this Act, a threat is a hazard or condition that could reasonably be expected to develop into a situation in which a person could be injured or made to be ill or damage could be caused to the environment or property, and a threat is immediate if such a situation already exists.

This definition focuses attention on the two principal axes of this challenge: the threat must relate to a non-trivial event (e.g. actual harm to a person, property or the environment); and immediacy of that actually occurring. These two dimensions are generally those to be found in all Transport Canada legislation dealing with situations which might require immediate harm reduction actions to be taken. The table below summarizes how each statute expresses this test:

Transport Canada “Notices and Order” – “Immediate Threat” Terminology

Legislation	Terminology
<i>Aeronautics Act</i>	7 (1) If the Minister decides to suspend a Canadian aviation document on the grounds that an immediate threat to aviation safety or security exists or is likely to occur as a result of an act or thing that was or is being done under the authority of the document or that is proposed to be done under the authority of the document, the Minister shall without delay, by personal service or by registered or certified mail sent to the holder of the document or to the owner or operator of any aircraft, airport or other facility in respect of which the document was issued, as the case may be, at that person’s latest known address, notify the holder, owner or operator of the Minister’s decision.
<i>Railway Safety Act</i>	<p>31 (2) If the railway safety inspector is satisfied that the <i>threat is immediate</i>, the inspector may...order...</p> <p>32 (3) If the Minister is of the opinion that a person has contravened a regulation made under section 24, the Minister... if the Minister believes that, by reason of that contravention, there exists in respect of particular railway works <i>an immediate threat</i> to safe railway operations, order...</p> <p>32 (3.1) If the Minister is of the opinion that the safety management system established by a company has <i>deficiencies that risk compromising railway safety</i>, the Minister may, ... order the ... necessary corrective measures</p> <p>32 (3.2) If the Minister is of the opinion that a company is implementing any part of its safety management system in <i>a manner that risks compromising</i></p>

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	<p>railway safety, the Minister may, ... order ...the necessary corrective measures.</p> <p>32 (3.21) If the Minister is of the opinion that a railway operation poses a significant threat to the safety of persons or property or to the environment, the Minister may, order ... the necessary corrective measures</p> <p>33. (1) If the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of railway transportation, the Minister may, by emergency directive sent to a company, order ...</p>
<i>Marine Transportation Security Act</i>	<p>16. (1) Where the Minister has reasonable grounds to believe that a vessel is a threat to the security of any person or thing, including any goods, vessel or marine facility, the Minister may direct the vessel</p>
<i>Canada Shipping Act, 2001</i>	<p>177 (1) If a pollution response officer believes on reasonable grounds that an offence under this Part has been committed by or in respect of a vessel, he or she may make a detention order in respect of the vessel.</p> <p>222 (1) If a marine safety inspector believes on reasonable grounds that a contravention of a relevant provision has been committed by or in respect of a vessel or that the vessel is not seaworthy, the inspector may make a detention order in respect of the vessel.</p> <p>(2) The inspector must make a detention order if the contravention is a contravention of section 110 (too many passengers) or the inspector also believes on reasonable grounds that the vessel is unsafe, that it is unfit to carry passengers or crew members or that its machinery or equipment is defective in any way so as to expose persons on board to serious danger.</p> <p>(3) If an information has been laid, an indictment has been preferred or a notice of violation has been issued or an assurance of compliance has been entered into under section 229 in respect of a contravention of a relevant provision that is alleged to have been committed by or in respect of a foreign vessel, a marine safety inspector must make a detention order in respect of the vessel.</p>
<i>International Bridges and Tunnels Act</i>	<p>17. If the Minister is of the opinion that there is an immediate threat to the security or safety of any international bridge or tunnel, the Minister may make directions ... requiring any person to do, or to refrain from doing, anything that in the opinion of the Minister it is appropriate to do or refrain from doing in order to respond to the threat.</p>
<i>Navigation Protection Act</i>	<p>13 (1) The Minister may order the owner of a work constructed or placed in, on, over, under, through or across any navigable water that is listed in the schedule to repair, alter or remove it if he or she is satisfied that</p>

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	<p>(a) it interferes more with navigation at the time in question than it did when it was constructed or placed;</p> <p>(b) it is causing or is likely to cause a serious and imminent danger to navigation; or</p> <p>(c) its repair, alteration or removal is in the public interest.</p>
Transportation of Dangerous Goods Act	<p>17. (1) An inspector may remove to an appropriate place any dangerous goods, the means of containment being used to handle or transport them or a standardized means of containment, or direct a person to do so, and may detain the thing removed until satisfied that the activity will be done in compliance with this Act, if the <i>inspector believes on reasonable grounds that any of the following activities is being carried out in a way that does not comply with this Act.</i></p> <p style="padding-left: 40px;">(a) importing, offering for transport, handling or transporting dangerous goods; or</p> <p style="padding-left: 40px;">(b) selling, offering for sale, delivering, distributing, importing or using a standardized means of containment.</p> <p>(2) The inspector may also take any other measures necessary to remedy the non-compliance or direct a person to take the necessary measures</p> <p>19. (1) If an inspector <i>believes on reasonable grounds that doing so is necessary to prevent an anticipated release of dangerous goods that could endanger public safety, or to reduce any danger to public safety</i> that results or could result from an actual release of dangerous goods, the inspector may</p>

5 A Notice or Order to immediately reduce harm informs the regulated party of the basis for the opinion and the direction of the issuing authority. Only duly authorized persons may issue Notices or Orders. A Notice or Order must disclose the authority upon which it is issued, the facts upon which the opinion or direction are based, the provision of the statute **or regulation** alleged to have been breached, and the actions to be taken to comply with the Notice or Order. It may also provide for how the recipient might be able to dispute the Notice or Order, however, such a dispute would not operate to stay the effect of the Notice or Order.

6. The best Notice or Order communicates as comprehensively as possible the entire basis for the direction, and detailed measures for how to comply. The recipient should not have to conjecture what steps he or she must take to honour the terms of the Notice or Order.

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GENERAL PROCEDURES

7. The following are the steps a Transport Canada officer must take to proceed to the issuance and service of a Notice or Order to respond to an “immediate threat”

Step One: Identification of the specific statutory, regulatory or other authority alleged to have been violated by the party. This means relating the actual non-compliant behavior, for which there are reasonable grounds, to a provision in the statute or the regulation.

Step Two: Confirm that the threat is one which may be proceeded with by way of a Notice or Order pursuant to the applicable legislation.

Step Three: Identify who has the authority to issue and serve the Notice or Order and ensure proof of this authority is available.

Step Four: Identify the exact legal entity who is the subject of the Notice or Order by correct legal name and legal address.

Step Five: Prepare a brief description of the violation sufficient that the alleged violator will be able to identify the non-compliant behavior and relate it to a specific date, location and regulatory provision, including the authority under which the Notice or Order is being issued ensuring that the specific terms of the authorizing statute are observed.

Step Six: Determine what, if any, special rules apply for the service of the Notice or Order on the legal entity, person, or vessel.

ROLES AND RESPONSIBILITIES

8. Officers are responsible for:
- preparing Notices or Orders in accordance with the provisions of the applicable statute and regulatory authority;
 - causing the Notices or Orders to be signed, issued and served on the alleged violator in accordance with the provisions of the applicable statute and regulatory authority;
 - seeking approval of the form of the Notices or Orders from the officer's supervisor.

9. Supervisors are responsible for:
- ensuring that the Notices or Orders, as drafted by the officer, conform with the provisions of the applicable statute and regulatory authority; and
 - consulting with the Centre of Enforcement Expertise and with the applicable Chief of Enforcement or equivalent.

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DETAILED PROCEDURES – RAILWAY SAFETY

10. The *Railway Safety Act* contains authority for authorized persons to take steps in certain circumstances to compel regulated parties to respond to harm or risks of harm in several distinct situations, however only one authority is designed to deal with **emergency** situations which may have immediate consequences.

Emergency Directive – Section 33

11. Section 33 provides the Minister with the authority to issue an emergency directive to address an immediate threat to safe railway operations or to the security of railway transportation and order a company to either cease a certain practice or undertake a certain practice. This emergency directive is not subject to a Transportation Appeal Tribunal Canada (TATC) review, nor could its operation be stayed except by application to the Federal Court for a review. It appears to be limited to companies with responsibility for railway operations or the security of railway transportation. It likely could not be used for directions other than against a “company²”. An emergency directive may be in effect for a period up to six months and must contain a statement of the Minister’s reasons for holding the opinion upon which the emergency directive was issued. The emergency directive may be renewed or rescinded by the Minister. Where there is inconsistency between the emergency directive and regulations made under subsection 18(1) or (2.1) or a rule in force under section 19 or 20, the emergency directive prevails.

It is important to note that the Minister may issue an emergency directive even though either the railway work or the railway operations appear to be in compliance with rules regarding construction or operations³. This is unique to the emergency directive and is not available except where the direction is given by the Minister as an emergency directive. It would not be possible to formulate such an order through any other provision.

Notices of Railway Safety Inspectors Concerning the Safety or Security of Railway Operations- Section 31

² The *Railway Safety Act* provides the following pertinent definitions: company means a railway company or a local railway company; local railway company means a person, other than a railway company or an agent or mandatary of a railway company, that operates railway equipment on a railway; railway company means a person that constructs, operates or maintains a railway;

³ (1.1) The Minister may issue an emergency directive even though (a) the construction of the railway work was undertaken in accordance with the law in force at the time; and (b) using the railway equipment or following or not following the maintenance or operating practice is in accordance with this Act or any regulations or rules made under it.

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12. Where a railway safety inspector forms an opinion that a person's conduct constitutes a threat to safety or security of railway operations or to the safety of persons or property, the railway safety inspector shall inform that person and any company whose railway operations are affected by the threat of that opinion and the reasons for the opinion. This could be considered as a form of verbal or informal counseling or warning, unless it is reduced to writing in which case it would be considered a written warning. It does not impose an obligation on the party "warned" that they are to either adjust their practices or come into compliance.

This is a duty imposed on the railway safety inspector ("shall inform") but it does not specify how the opinion is to be communicated, nor does it specify the time within which the railway safety inspector shall inform the person or the company. As it is more in the nature of a warning to the person or the company of the opinion, it could be followed by an enforcement sanction where there is an underlying breach of a rule, but it does not require the person or the company whose operations are affected to take any steps to resolve the situation, which in the opinion of the railway safety inspector, amount to a "threat to safety or security of railway operations" or a threat to the "safety of persons or property".

Where however, the railway safety inspector is of the opinion that the threat is immediate, then pursuant to subsection 31(2), the inspector optionally, may, in the Notice, order the person or any company whose railway operations are affected by the threat, to take the measures that the inspector specifies in the Notice to mitigate the threat until that threat has been removed to the satisfaction of the inspector.

Where there is a clear breach of a rule regarding railway operations that results in such a threat, then the railway safety inspector can formulate his or her opinion and any mitigation measures in terms of requiring the person to conduct their operations in accordance with the rule. Where there is no such clear breach, then the formulation of the notice or order must be approached with much greater caution as it is not grounded in bringing a regulated party into compliance. Where such a notice or order is proposed, seeking legal advice in advance is recommended to determine if legal authority can be provided to support its issuance.

Contravention of Regulations Made under Section 24 – Subsection 32(3)

Where the Minister is of the opinion that a person, has contravened a regulation made under section 24⁴ and where the Minister is further of the opinion that there exists an immediate threat

⁴ Regulations which deal with buildings, structures and activities on adjoining lands.

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to safe railway operations, then the Minister may make certain harm reduction orders: to the person responsible for the threat to take actions to remove the threat; and to the railway company of a threat for which it may be responsible. The railway company may be ordered to take action to either cease use of the railway work in question or to operate on terms and conditions which address the threat.

Railway Operation – Subsection 32(3.21)

Subsection 32(3.21) provides that where the Minister is of the opinion that a railway operation poses a significant threat to the safety of persons, property or the environment, then the Minister may, by notice sent to the person responsible for the railway operation, order the person to take necessary corrective measures. There is no specific additional provision related to addressing the threat if it is immediate.

DETAILED PROCEDURES – AVIATION

Emergency Directive – Section 4.76

13. The *Aeronautics Act* provides an emergency authority to the Minister in section 4.76 so that where the Minister is of the opinion that there is an immediate threat to aviation security or to any aircraft or aerodrome or other aviation facility, or to the safety of the public, passengers or crew members. This is rarely used as its focus may be limited to matters related to security. The preferred tool for matters related to safety is found below. Under section 4.76 the Minister may direct any person to do, or to refrain from doing, anything that in the opinion of the Minister it is necessary to do or refrain from doing in order to respond to the threat. This authority may be delegated to officers of Transport Canada on terms and conditions.

Any order made under section 4.76 takes effect immediately and ceases to have force and effect no later than 72 hours after issuance. The Emergency Directive may provide that it applies in lieu of or in addition to any aviation security regulation or security measure and where there is any conflict between an aviation security regulation or a security measure and an Emergency Directive, the Emergency Direction prevails to the extent of the conflict.

Suspension for Immediate Threat – Subsection 7(1)

In Civil Aviation matters, reference must be had to the applicable Staff Instructions, being Staff Instruction (SI) SUR-001 – Surveillance Procedures and Staff Instruction (SI) SUR-014 – Suspension or Cancellation of Canadian Aviation Documents for Safety Reasons, as modified

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by Internal Process Bulletin 2013-02 CLARIFICATION IN RESPECT TO CERTIFICATE ACTION IN ACCORDANCE WITH SECTIONS 7.(1), 7.1(1)(B) AND 7.1(1)(C) OF THE AERONAUTICS ACT. In summary these provide direction to Transport Canada Civil Aviation personnel when conducting surveillance activities, to verify regulatory compliance by utilizing a systems-based methodology.

Where an immediate threat to aviation safety or security exists, the Minister may cause a notice to be prepared to be served on the party.

DETAILED PROCEDURES - MARINE

Canada Shipping Act, 2001

Pollution Response Officer – Section 177 – Detention Order

14. Section 177 of the *Canada Shipping Act, 2001* provides a duly appointed pollution response officer with authority to detain a vessel where the officer believes on reasonable grounds that an offence under Part 8 of the *Canada Shipping Act, 2001* has been committed. The order itself must be in writing and addressed to every person empowered to grant clearance in respect of the vessel.

The notice must indicate the measures necessary to ensure compliance with Part 8 and where the measures are complied with to the satisfaction of the pollution response officer, then the pollution response officer must rescind the order. The vessel cannot be moved unless given permission pursuant to section 179 by the Minister of Fisheries and Oceans. Additionally, subsection 177(9) makes the authorized representative, or where there is no authorized representative, then the owner of the vessel liable for all expenses incurred in respect of the detained vessel.

Marine Safety Inspector – Section 222 – Detention Order

15. Subsection 222(1) of the *Canada Shipping Act, 2001* provides a similar power for a duly appointed marine safety inspector to make a detention order for a vessel where the marine safety inspector believes on reasonable grounds that a contravention of a relevant provision has been committed by or in respect of a vessel OR that the vessel is not seaworthy.

16. Subsection 222(2) provides that the inspector is obliged to make a detention order:

If the contravention is a contravention of section 110 (too many passengers); or If the inspector believes on reasonable grounds that the vessel is unsafe, that the vessel is unsafe, that it is

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unfit to carry passengers or crew members, or that the machinery or equipment of the vessel is defective in any way that could expose persons on board to serious danger. The notice must indicate the measures necessary to ensure compliance and where the measures are complied with to the satisfaction of the pollution response officer, then the pollution response officer must rescind the order. The vessel cannot be moved unless given permission pursuant to section 224 by the Minister of Transport. Subsection 222(11) makes the authorized representative of the vessel liable for all expenses incurred in respect of the detained vessel.

Marine Transportation Security Act

17. Section 16 of the *Marine Transportation Security Act* provides authority to the Minister to act where the Minister has reasonable grounds to believe that a vessel is a threat to the security of any person or thing, including any goods, vessel or marine facility. In that case, the Minister may direct the vessel to proceed to a specified location, leave Canada or remain outside of Canada.

The Minister may also direct a vessel registered outside Canada to remain outside Canada, proceed out of Canada or not enter or dock at a marine facility if the Minister has reasonable grounds to believe that the vessel or any persons or goods on board it have not been subjected to screening or other measures equivalent to the authorized screening or other measures that would apply under this Act if the vessel were registered in Canada.

The *Marine Transportation Security Act* has specific offences related to non-compliance with a section 16 direction pursuant to section 17 of the statute.

DETAILED PROCEDURES- TRANSPORTATION OF DANGEROUS GOODS, 1992 ACT

Order into Compliance

18. While not an emergency order in the same sense as other Notices or Orders, a TDG inspector may direct or take steps to detain dangerous goods where it is not in compliance with the safety provisions of the legislation. The relevant section provides:

17. (1) An inspector may remove to an appropriate place any dangerous goods, the means of containment being used to handle or transport them or a standardized means of containment, or direct a person to do so, and may detain the thing removed until satisfied that the activity will be done in compliance with this Act, if the ***inspector believes on reasonable grounds that any of the following activities is being carried out in a way that does not comply with this Act.***

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- (a) importing, offering for transport, handling or transporting dangerous goods; or
- (b) selling, offering for sale, delivering, distributing, importing or using a standardized means of containment.

(2) The inspector may also take any other measures necessary to remedy the non-compliance or direct a person to take the necessary measures

Intervention to prevent release – Subsection 19(1)

19. Pursuant to subsection 19. (1) where an inspector ***believes on reasonable grounds that doing so is necessary to prevent an anticipated release of dangerous goods that could endanger public safety, or to reduce any danger to public safety*** that results or could result from an actual release of dangerous goods, the inspector may either direct a person to take steps to prevent the release or actually take steps to remove the dangerous goods to an appropriate place.

DETAILED PROCEDURES- INTERNATIONAL BRIDGES AND TUNNELS ACT

Emergency directions Section 17

20. The *International Bridges and Tunnels Act* provides in section 17 that where the Minister is of the opinion that there is an immediate threat to the security or safety of any international bridge or tunnel, the Minister may make directions requiring persons to do, or to refrain from doing, anything that in the opinion of the Minister it is appropriate to do or refrain from doing in order to respond to the threat. This authority may be delegated to an officer of Transport Canada.

Any order made under section 17 takes effect immediately and ceases to have force and effect no later than 30 days after issuance. The emergency direction may provide that it applies in lieu of or in addition to any regulation and where there is any conflict between a regulation, the emergency direction prevails to the extent of the conflict.

DETAILED PROCEDURES - NAVIGATION PROTECTION ACT

Removal of Work Order Section 13

21. The *Navigation Protection Act* provides in section 13 that the Minister may order that the owner of a work repair, alter or remove the work, if the Minister is satisfied that the work interferes with navigation when it was constructed or placed, or the work is causing or is likely to cause a ***serious and imminent danger*** to navigation or where the repair, alteration or removal

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is in the public interest. Where the Minister is satisfied that it is necessary in the circumstances, the Minister may order the owner to do any other thing with respect to the work.

Where the owner fails to comply with the order, then the Minister may cause the owner to be carried out at the expense of the owner.

NOTICE OR ORDER CHECKLIST

Step One: Identify the specific statutory, regulatory or other authority alleged to have been violated by the party.

Step Two: Confirm that the threat is one which may be proceeded with by way of a Notice or Order pursuant to the applicable legislation.

Step Three: Identify who has the authority to issue and serve the Notice or Order

Step Four: Identify who is the subject of the Notice or Order and how to serve them.

Step Five: Prepare a brief description of the grounds upon which the opinion is formed

Step Six: Determine what, if any, special rules apply for the service of the Notice or Order on the legal entity, person, or vessel.

Step Seven Consider the need to consult legal counsel.

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Annex A – Transport Canada Statutes Authorizing the Use of Notices and Orders to Immediately Reduce Harm or Risk of Harm

Aeronautics Act

4.76 If the Minister is of the opinion that there is an immediate threat to aviation security or to any aircraft or aerodrome or other aviation facility, or to the safety of the public, passengers or crew members, the Minister may direct any person to do, or to refrain from doing, anything that in the opinion of the Minister it is necessary to do or refrain from doing in order to respond to the threat, including directions respecting

- (a) the evacuation of aircraft and of aerodromes or other aviation facilities, or portions of them;
- (b) the diversion of aircraft to alternate landing sites; and
- (c) the movement of aircraft or persons at aerodromes or other aviation facilities.

7(1) If the Minister decides to suspend a Canadian aviation document on the grounds that an immediate threat to aviation safety or security exists or is likely to occur as a result of an act or thing that was or is being done under the authority of the document or that is proposed to be done under the authority of the document, the Minister shall without delay, by personal service or by registered or certified mail sent to the holder of the document or to the owner or operator of any aircraft, airport or other facility in respect of which the document was issued, as the case may be, at that person's latest known address, notify the holder, owner or operator of the Minister's decision.

Railway Safety Act

Notices of Railway Safety Inspectors Concerning the Safety or Security of Railway Operations- Section 31

31. (1) If a railway safety inspector is of the opinion that a person's conduct or anything for which a person is responsible constitutes a threat to the safety or security of railway operations or the safety of persons or property, the inspector shall inform, by notice sent to the person and to any company whose railway operations are affected by the threat, the person and the company of that opinion and of the reasons for it.

(2) If the railway safety inspector is satisfied that the threat is immediate, the inspector may, in the notice, order the person or any company whose railway operations are affected by the threat, to take the measures that are specified in the notice to mitigate the threat until it has been removed to the inspector's satisfaction

Ministerial Orders – Section 32

32 (3) If the Minister is of the opinion that a person has contravened a regulation made under section 24, the Minister

- (a) by notice sent to the person,
 - (i) shall inform the person of that opinion and of the reasons for it, and
 - (ii) may, if the Minister believes that, by reason of that contravention, there exists in respect of particular railway works an immediate threat to safe railway operations, order the person to take any action that is necessary to remove the threat; and
- (b) by notice sent to the railway company concerned,
 - (i) shall inform the railway company of that opinion and of the reasons for it, and

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(ii) may, if the Minister believes that, by reason of that contravention, there exists an immediate threat to safe railway operations, order the railway company to ensure that specified railway works or specified railway equipment not be used, or not be used otherwise than under terms and conditions specified in the notice, until appropriate action to remove the threat has, to the Minister's satisfaction, been taken by the person referred to in paragraph (a).

32 (3.21) If the Minister is of the opinion that a railway operation poses a significant threat to the safety of persons or property or to the environment, the Minister may, by notice sent to the person responsible for the railway operation, order the person to take the necessary corrective measures.

Emergency Directive – Section 33

33. (1) If the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of railway transportation, the Minister may, by emergency directive sent to a company, order it

- (a) either absolutely or to the extent specified in the directive, to stop using the kind of railway works or railway equipment or following the maintenance or operating practice that poses the threat; or
- (b) to follow a maintenance or operating practice specified in the directive if the threat is posed by the company's failure to follow that practice.

International Bridges and Tunnels Act

17. If the Minister is of the opinion that there is an immediate threat to the security or safety of any international bridge or tunnel, the Minister may make directions — including directions respecting the evacuation of the bridge or tunnel and the diversion of traffic or persons — requiring any person to do, or to refrain from doing, anything that in the opinion of the Minister it is appropriate to do or refrain from doing in order to respond to the threat.

Marine Transportation Security Act

16. (1) Where the Minister has reasonable grounds to believe that a vessel is a threat to the security of any person or thing, including any goods, vessel or marine facility, the Minister may direct the vessel

- (a) to proceed to a place specified by the Minister in accordance with any instructions the Minister may give regarding the route and manner of proceeding and to remain at the place until the Minister is satisfied that the security threat no longer exists;
- (b) to proceed out of Canada in accordance with any instructions the Minister may give regarding the route and manner of proceeding; or
- (c) to remain outside Canada

Transportation of Dangerous Goods Act, 1992

17. (1) An inspector may remove to an appropriate place any dangerous goods, the means of containment being used to handle or transport them or a standardized means of containment, or direct a person to do so, and may detain the thing removed until satisfied that the activity will be done in compliance with this Act, if the inspector believes on reasonable grounds that any of the following activities is being carried out in a way that does not comply with this Act:

- (a) importing, offering for transport, handling or transporting dangerous goods; or
- (b) selling, offering for sale, delivering, distributing, importing or using a standardized means of containment.

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(2) The inspector may also take any other measures necessary to remedy the non-compliance or direct a person to take the necessary measures.

19. (1) If an inspector believes on reasonable grounds that doing so is necessary to prevent an anticipated release of dangerous goods that could endanger public safety, or to reduce any danger to public safety that results or could result from an actual release of dangerous goods, the inspector may do any of the following:

- (a) remove the dangerous goods, or a means of containment being used to handle or transport the dangerous goods, to an appropriate place, or direct a person to remove the dangerous goods or the means of containment to such a place;
- (b) direct a person to do anything else to prevent the release or reduce any resulting danger to public safety, or to refrain from doing anything that might impede the prevention of the release or the reduction of the danger; and
- (c) exercise any power set out in section 15.

Canada Shipping Act, 2001

Pollution Response Officer - Part 8

177 (1) If a pollution response officer believes on reasonable grounds that an offence under this Part has been committed by or in respect of a vessel, he or she may make a detention order in respect of the vessel.

(2) A detention order made under this section must be in writing and be addressed to every person empowered to grant clearance in respect of the vessel.

(3) Notice of a detention order made under this section in respect of a vessel must be served on the master

- (a) by delivering a copy of the notice personally to the master; or
- (b) if service cannot reasonably be effected in the manner provided in paragraph (a), by leaving a copy of the notice with the person who is, or appears to be, in charge of the vessel or, if there is no such person, by fixing a copy of the notice to a prominent part of the vessel.

(4) The notice must

- (a) indicate the measures to ensure compliance with this Part that must be taken for the detention order to be rescinded; and
- (b) if an indictment has been preferred in respect of the offence, indicate the amount and form of security that, pending the outcome of any proceedings related to the indictment, must be deposited with the Minister of Fisheries and Oceans for the detention order to be rescinded.

(5) If a vessel in respect of which a detention order is made under this section is registered in a foreign state, that state is to be notified that the order was made.

(6) A pollution response officer must

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- (a) rescind a detention order made under this section if he or she is satisfied that the measures indicated in the notice referred to in subsection (4) have been taken and, if applicable, security in the amount and form indicated in the notice referred to in that subsection has been deposited with the Minister of Fisheries and Oceans; and
- (b) notify, in the form and manner specified by the Minister of Fisheries and Oceans, the master and the persons referred to in subsection (2) of the rescission.

(7) No person to whom a detention order made under this section is addressed shall, after notice of the order is received by them, grant clearance to the vessel in respect of which the order was made unless they have been notified that the order has been rescinded under subsection (6).

(8) Subject to [section 179](#), no person shall move a vessel that is subject to a detention order made under this section.

(9) The authorized representative or, if there is no authorized representative, the owner of a vessel that is detained under this section is liable for all expenses incurred in respect of the detained vessel.

(10) The Minister of Fisheries and Oceans, after proceedings in respect of which security was deposited are concluded,

- (a) may apply the security to reimburse Her Majesty in right of Canada, either fully or partially, if any of the expenses or any fine has not been paid; and
- (b) is to return the security, or any part of it that remains if it is applied under paragraph (a), if all expenses and any fine imposed have been paid.

Marine Safety Inspector

222 (1) If a marine safety inspector believes on reasonable grounds that a contravention of a relevant provision has been committed by or in respect of a vessel or that the vessel is not seaworthy, the inspector may make a detention order in respect of the vessel.

(2) The inspector must make a detention order if the contravention is a contravention of [section 110](#) (too many passengers) or the inspector also believes on reasonable grounds that the vessel is unsafe, that it is unfit to carry passengers or crew members or that its machinery or equipment is defective in any way so as to expose persons on board to serious danger.

(3) If an information has been laid, an indictment has been preferred or a notice of violation has been issued or an assurance of compliance has been entered into under [section 229](#) in respect of a contravention of a relevant provision that is alleged to have been committed by or in respect of a foreign vessel, a marine safety inspector must make a detention order in respect of the vessel.

(4) A detention order made under this section must be in writing and be addressed to every person empowered to grant clearance in respect of the vessel.

(5) Notice of a detention order made under this section in respect of a vessel must be served on the master

- (a) by delivering a copy of the notice personally to the master; or

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(b) if service cannot reasonably be effected in the manner provided in paragraph (a), by leaving a copy of the notice with the person who is, or appears to be, in charge of the vessel or, if there is no such person, by fixing a copy of the notice to a prominent part of the vessel.

(6) The notice must

(a) indicate the measures to ensure compliance with the relevant provision or to render the vessel seaworthy that must be taken for the detention order to be rescinded;

(b) in the case of a foreign vessel, if an information has been laid, an indictment has been preferred or a notice of violation has been issued or an assurance of compliance has been entered into under [section 229](#) in respect of a contravention of a relevant provision, indicate the amount and form of security that, pending the outcome of any proceedings related to the information, indictment or notice, must be deposited with the Minister for the detention order to be rescinded; and

(c) in the case of a Canadian vessel, if an indictment has been preferred in respect of a contravention of a relevant provision, indicate the amount and form of security that, pending the outcome of any proceedings related to the indictment, must be deposited with the Minister for the detention order to be rescinded.

(7) If a vessel in respect of which a detention order is made under this section is registered in a foreign state, that state is to be notified that the order was made.

(8) A marine safety inspector must

(a) rescind a detention order made under this section if the inspector is satisfied that the measures indicated in the notice referred to in subsection (6) have been taken and, if applicable, security in the amount and form indicated in the notice referred to in that subsection has been deposited with the Minister; and

(b) notify, in the form and manner specified by the Minister, the master and the persons referred to in subsection (4) of the rescission.

(9) No person to whom a detention order made under this section is addressed shall, after notice of the order is received by them, grant clearance to the vessel in respect of which the order was made unless they have been notified that the order has been rescinded under subsection (8).

(10) Subject to [section 224](#), no person shall move a vessel that is subject to a detention order made under this section.

(11) The authorized representative of a vessel that is detained under this section is liable for all expenses incurred in respect of the detained vessel.

(12) The Minister, after proceedings in respect of which security was deposited are concluded,

(a) may apply the security to reimburse Her Majesty in right of Canada, either fully or partially, if any of the expenses or any fine or penalty has not been paid; and

(b) is to return the security, or any part of it that remains if it is applied under paragraph (a), if all expenses and any fine or penalty imposed have been paid.

Navigation Protection Act

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Removal of works, etc.

13(1) The Minister may order the owner of a work constructed or placed in, on, over, under, through or across any navigable water that is listed in the schedule to repair, alter or remove it if he or she is satisfied that

- (a) it interferes more with navigation at the time it did when it was constructed or placed;
- (b) it is causing or is likely to cause a serious and imminent danger to navigation; or
- (c) its repair, alteration or removal is in the public interest

Works

(2) The Minister may, if he or she is satisfied that it is necessary in the circumstances, order the owner to do any other thing with respect to the work.

Owner's Expense

(3) If the owner fails to comply with an order made under subsections (1) or (2), the Minister may cause the order to be carried out at the expense of the owner.

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Annex B - Authority to Issue and Serve Notices of Violation Transport Canada Statutes and Regulations

Statue	Authority to Issue and Serve Notices of Violation	Proof of Authority
<i>Aeronautics Act</i>	7.7 (1) If the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention, in which case the Minister shall, by personal service or by registered or certified mail sent to the person at their latest known address, notify the person of his or her decision	Proof of internal delegation by Minister of authority to make this decision.
<i>Canada Shipping Act, 2001</i>	229.(1) If the Minister has reasonable grounds to believe that a person or vessel has committed a violation, the Minister may ... (b) issue, and cause to be served on the person or vessel, a notice of violation that names the person, identifies the violation and sets out (a) the penalty for the violation that the person is liable to pay; and (b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.	Proof of internal delegation by Minister of authority to make this decision.
<i>Canada Marine Act</i>	108. (1) The Minister may designate any person or member of a class of persons as an enforcement officer for any of the purposes of this Act or the regulations and shall furnish each person so designated with a certificate of designation setting out the purposes and areas for which the enforcement officer is designated. 129.05 (1) If an enforcement officer believes on reasonable grounds that a person or ship has committed a violation, the officer may issue, and shall cause to be served on the person or ship, a notice of violation	108. (3) In carrying out duties and functions under this Act, an enforcement officer shall, on request, produce the certificate of designation to the individual appearing to be in charge of any ship, vehicle, aircraft, premises or other place or any goods, in respect of which the officer is acting.
<i>International Bridges and Tunnels Act</i>	39. (1) Subject to subsection (6), the Minister or a person designated by the Minister may, for the purpose of ensuring compliance with this Act and any regulation, order or directive made under this Act, 46. If a person designated by the Minister under subsection 39(1) believes on reasonable grounds that a person has committed a violation, he or she may issue and serve on the person a notice of violation that names the person, identifies the violation and sets out (a) the penalty for the violation that the person is liable to pay; and (b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.	39 (2) Every person designated by the Minister shall receive an authorization in the form that may be established by the Minister attesting to the person's designation. On entering any place, the person shall, if requested, produce the authorization to the person in charge of the place.
<i>Marine Transportation Security Act</i>	33.(1) If the Minister has reasonable grounds to believe that a person has committed a violation, the Minister may...	Proof of internal delegation by Minister of authority to make this decision. NB this is different from a

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(b) issue, and cause to be served on the person, a notice of violation that names the person, identifies the violation and sets out

section 22 designation as a security inspector.

(a) the penalty for the violation that the person is liable to pay; and
(b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.

Navigation Protection Act

33. The Minister may designate persons or classes of persons for the purposes of the administration and enforcement of this Act.

39.11 (1) A designated person may issue a notice of violation and cause it to be provided to a person if the designated person has reasonable grounds to believe that the person has committed a violation.

40.11 (1) The Minister may designate persons, or classes of persons, as enforcement officers.

34 (2) On entering a place, the designated person shall, on request, produce to the person in charge of the place a certification in the form established by the Minister attesting to the designation.

Railway Safety Act

Railway Safety Administrative

Monetary Penalties

Regulations

40.14 When a person designated by the Minister under subsection 40.11(1) believes on reasonable grounds that a person has committed a violation, he or she may issue and serve on the person a notice of violation that names the person, identifies the violation and sets out

(a) the penalty for the violation that the person is liable to pay; and
(b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.

...

4. The authorization referred to in subsection 40.11(2) of the Act shall be in the form set out in Schedule 2. Not the same as a designation of a person as a railway safety inspector.

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TITLE

Standard on Instrument and Penalty Selection – Graduated Approach

SUBJECT

Transport Canada (TC) enforcement authority has its source in statutes passed by the Parliament of Canada and in regulations made under those statutes by the Governor in Council or by the Minister of Transport. Enforcement actions authorized in that legislation are the primary tools to be exercised in the enforcement of those statutes and regulations.

The first priority of any enforcement officer is the reduction of immediate or imminent risk or harm.

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PURPOSE AND SCOPE

This document provides direction to TC officers on the exercise of their legislative enforcement authorities to select the enforcement instrument that best corresponds to the legislative intent, the harm caused by the offence and the characteristics of the offender¹. This document also identifies the obligations of enforcement personnel, functions and programs to advise, consult, recommend and seek approval for enforcement instrument selection decisions.

POLICY STATEMENT

It is the policy of TC that its personnel, when selecting an enforcement instrument, do so in accordance with the legislative authorities and in accordance with this standard.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. This standard provides on how to select the appropriate enforcement instrument and penalty amount, if applicable. Regardless of the instrument selected, officers will always document the reasons for their decisions.
2. Different enforcement instruments are employed by modes, programs and regions based on an assessment of the legislative intent, the severity of the non-compliant behavior and the characteristics of the offender. This is the **Graduated Approach**. Matching the response to the non-compliant behavior in a manner that most effectively ensures or promotes that the behavior will not repeat is the underpinning of an effective enforcement regime. ***What is the most effective instrument to ensure the offender comes into compliance and does not repeat the non-compliance?*** All enforcement responses must consider the legislative intent or gravity of the offence, the harm occasioned by the action and the characteristics of the offender as related to the determination to take the least intrusive approach to achieving the desired result.
3. These enforcement instruments range from informal verbal counseling to monetary penalties to prosecution on indictment or even to the suspension/cancellation of an operating certificate. Enforcement instruments are authorized by legislation administered by TC and

¹ Sources of this direction include the legislation, accompanying Regulatory Impact Analysis Statements and selected departmental materials.

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employed by TC enforcement officers authorized to do so under the legislation. While there are slight differences between authorities and programs, there are common elements to the selection and employment of these enforcement instruments.

4. The five most common enforcement tools available when a contravention has been detected are:

- a. **Informal verbal counselling** encouraging the alleged offender to comply with the requirements and providing information and assistance to facilitate compliance;
- b. **Written warning** where the attention of the alleged offender is drawn to the specific non-compliant behaviour and the offender is advised that failure to comply with the requirements may result in even more serious penalties; including an Assurance of Compliance under the Canada Shipping Act and a demand for a corrective action plan pursuant to the Aeronautics Act ;
- c. **Administrative Monetary Penalty (AMP)** where the violator is served with a formal Notice of Violation advising the violator of the occurrence of a violation and in respect of which a monetary penalty has been assessed. The goal is to denounce the behaviour and encourage future compliance;
- d. **Suspension or Cancellation of Operating Certificate** where the offender is served with a Notice that the Minister is amending, suspending or cancelling the offender's permission to operate; and
- e. **Prosecution** where the offender is served with criminal process in the form of summary conviction information or on indictment subjecting the offender to a criminal trial and potentially a fine or incarceration².

5. Regardless of how an enforcement officer learns of a contravention, the selection of the appropriate enforcement instrument is to be based on a thoughtful systematic examination of the three important elements:

- a. Gravity of the “non-compliance” as set out in the legislation; (legislative intent);
- b. The seriousness of the non-compliance as committed; and
- c. The characteristics of the party not in compliance.

Other considerations may to a lesser degree influence the decision, such as national or regional consistency, however the ideal instrument is one which ensures to the greatest extent possible that the offender comes into compliance and does not repeat the non-compliant behavior. In its

² Other examples of modal variations of statute-based measures include Assurances of Compliance (CSA 2001), Notices and Orders (RSA), Notices of Infraction (TDG), and Contraventions Act tickets (TDG, CSA 2001)

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most basic form however, it is a three-step test³. The enforcement instrument selection decision is a systematic, deliberate and documented consideration of these three elements. Enforcement instrument selection must be conducted in accordance with this standard. Only in exceptional and documented and approved instances may an enforcement instrument selection decision depart from this standard.

6. All enforcement instrument selection decisions follow this approach and any subsequent proceedings (i.e. Administrative Monetary Penalty) are bound to follow the procedures specified in the legislation regarding notices, evidence and hearings. Where the instrument selected is authorized under TC legislation, those statutes provide a complete code for the proceedings. In the circumstances where the enforcement instrument selected is a prosecution by way of summary conviction or indictment, the process to be followed is dictated by the *Criminal Code* of Canada.

7. Enforcement actions authorized under TC statutes are administrative. They are not penal, except when the instrument selected is a prosecution by way of summary conviction or on indictment or a ticket issued under the Contraventions Act. All the rest are administrative⁴. The decision therefore as to whether the consequences are penal or administrative is a decision taken by TC enforcement officers.

8. Where the action is administrative, the *Canadian Charter of Rights and Freedoms* provisions apply but to a much more limited extent (i.e. there is no need for search warrants or Charter warnings to gather evidence). A detailed review of these rights is set out in the Standard on Transitions – Safety, Security & Environmental Concerns, Inspections and Investigations and in the Standard on Interviews and Interrogations. Unless the enforcement action is initiated as a prosecution (summary conviction or indictable offence), the procedure to be followed is contained within the administrative provisions contained in the authorizing TC statute and as described in these standards

9. All TC statutes which authorize Administrative Monetary Penalties require the enforcement official to select either a penal or an administrative option and once selected the decision may not be reversed. In the case of monetary penalties under the *Aeronautics Act*,

³ Annex A contains a flowchart for this decision-making process.

⁴ It is the opinion of the Department of Justice that even where, as for example in the *Aeronautics Act*, the term “offence” is employed to refer to a breach of a regulatory provision, where that breach leads only to an administrative monetary penalty, that offence is not to be considered penal. In the case of the *Aeronautics Act*, virtually all provisions are designated and cannot be proceeded with except by way of administrative monetary penalty.

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there is no option for penal enforcement for any contravention which is a “designated provision” (approximately 98% of all provisions are designated).

10. It is a principle of enforcement instrument selection that the instrument selected is to be as effective as possible in the least intrusive manner necessary to achieve the goal of compliance. The instrument selected is matched to the gravity of the offence (as expressed in the legislation), the harm occasioned by the offence and the characteristics of the offender. This may be restated as “What does it take to motivate the offender to comply with the legislative requirements?” The offender is expected to be in compliance at all times with the applicable regulations.

11. Another factor in the selection of the appropriate enforcement action is the desire for equitable and consistent treatment of non-compliant behaviour. This is of secondary importance to the objective to achieving compliance with any particular offender. The desire for consistency is fulfilled through effective information sharing and discussion.

12. There are three steps in the selection of the enforcement instrument before a final and complete decision for how to proceed is taken: (see Annex A)

- a. What is the gravity of the offence in the legislation: minor, moderate or serious;
- b. What are the available enforcement instruments; and
- c. Should the instrument/penalty be less serious or more serious considering:
 - i. Characteristics of offence (negligence, harm to people, property, environment)
 - ii. Characteristics of the offender (compliance history, cooperation, assistance, remediation).

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PROCEDURES

Step One: Identify the Gravity of the Offence in the Legislation

13. All contraventions fall into one of three categories (minor/low risk, moderate/medium risk or serious/high risk). The determination of the category of the contravention is independent of any assessment of the offender. The first step is to categorize the contravention itself. Is it Minor, Moderate or Serious? Regardless the character of the offender and the harm caused, how seriously does the legislation consider the contravention? The table⁵ below identifies how each of the primary statutes differentiates between the seriousness of the contraventions.

Gravity of the Offence in Legislation			
	Minor/Low Risk	Moderate/Medium Risk	Serious/High Risk
Aeronautics Act	Individual/Corporation \$1000/\$5000	Individual/Corporation \$3000/\$15000	Individual/Corporation \$5000/\$25000
Canada Shipping Act, 2001⁶	Individual/Vessel Corporation \$250 /\$5000	Individual/Vessel Corporation \$600/\$12000	Individual/Vessel Corporation \$1250/\$25,0000
Railway Safety Act	Individual/Corporation \$5000/\$25000	Individual/Corporation \$25000/\$125000	Individual/Corporation \$50000/\$250000
Marine Transportation Security Act	Individual/Corporation \$250 - \$1000/\$1000 - \$5000	Individual/Corporation \$600 - \$2400/\$3000 - \$12000	Individual/Corporation \$1250 - \$5000/\$6000 - \$25000

All provisions differentiate between the penalties for an individual and that of a corporation or vessel (e.g. \$1000/\$5000 – Individual/Corporation). This is an indication of how seriously Parliament views each violation.

Step Two: Identify Available Enforcement Instrument Options

⁵ This table contains the ranges for Administrative Monetary Penalties set out in the Regulatory Impact Analysis Statements which accompanied publication of the regulations, except for the **Aeronautics Act** ranges which are drawn directly from the regulations themselves (**Canada Shipping Act, 2001**, SOR/2012-246 2012-11-23; **Marine Transportation Security Act** SOR/2006-269 2006-11-15; **Railway Safety Act** SOR/2014-233 2014-10-10)

⁶ By policy, Marine Safety differentiates between 1st, 2nd and Subsequent violations assigning correspondingly higher penalties. This is expressed not in legislation but in policy.

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For each of the three categories of contravention, only certain specific enforcement instrument options are permitted. Enforcement officers select from among these options. Where the enforcement officer recommends an option that is not on the list, this recommendation must be documented by the enforcement officer and approved by the supervisor of the enforcement officer.

Minor/Low Risk Contravention

14. Where the provision that has been contravened is minor, there are three options:
- a verbal warning;
 - a written warning; or
 - an administrative monetary penalty up to the maximum for a minor violation.

Moderate/Medium Risk Contravention

15. Where the provision contravened is moderate, there are four options:
- a written warning,
 - an administrative monetary penalty up to the maximum for a moderate violation; or
 - a punitive suspension of an operating certificate (where available); or
 - prosecution as a summary conviction offence. **Note that this last option is not available under the *Aeronautics Act*.**

Serious/High Risk Contravention

16. Where the provision contravened is serious, then there are three options:
- an Administrative Monetary Penalty in an amount up to the maximum for a serious violation;
 - a punitive suspension or cancellation of an operating certificate (where available); or
 - a prosecution as a summary conviction offence. **Note that this last option is not available under the *Aeronautics Act*.**

Step Three: Select Enforcement Option

Determine which option is appropriate by assessing the actual harm caused by the offence and the characteristics of the offender.

17. Assess Offence Characteristics:
- Degree of harm caused; and
 - Degree of negligence or deliberate conduct.

18. Assess Offender Characteristics:

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- a. Compliance History;
- b. Economic Benefit;
- c. Mitigation of Harm;
- d. Cooperation with officials; and
- e. Detection.

DETERMINING FACTORS TABLE			
Factor	Column I	Column II	Column III
OFFENCE CHARACTERISTICS (i.e. impact)			
I. Harm	No harm	Some harm	Property harm or any personal harm
II. Degree of negligence or deliberateness	Purely negligent	Reckless as to consequences	Deliberate
OFFENDER CHARACTERISTICS (i.e. potential to reoffend)			
III. Compliance History	None similar	Prior warning for similar	Prior AMP for similar
IV. Economic Benefit	None	Slight	Moderate or greater
V. Mitigation of harm	Effects mitigated	Some effects mitigated	Slight or no mitigation
VI. Cooperation with TC	Fully cooperative Admits responsibility	Incomplete or difficult cooperation	No cooperation
VII. Detection of contravention	Reported by offender	Discovered during routine inspection	Discovered after extensive effort

19. Use of the Determining Factors Table
- a. Where any factor assessed is rated in Column III, the least severe option or penalty should not be available;
 - b. Where the assessment of the severity of the behaviour of the offender results in all factors rated as column I, then the least severe penalty may be recommended.
 - c. Where the assessment results in 1 – 3 factors rated in Column II then the penalty should not be the least severe.
 - d. Where the assessment results in 4 or more factors rated in Column III, then the penalty should be the most severe for that category.

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Other Considerations

20. Once the enforcement response has been identified based on the seven primary factors (above) consideration may be given to whether or not in the particular circumstances the approach is consistent with other responses in similar situations or with respect to the particular party. This is not the opportunity to customize enforcement responses merely to reflect a subjective appreciation of the party's circumstance, but it may be that there are factors that would mitigate or aggravate beyond those set out above.

21. In the final analysis, the enforcement response selected must be, in the opinion of the enforcement officer making the decision what is the optimal approach for that party to cause the party to come into compliance and remain in compliance. It is designed promote compliance and prevent recurrence of the event. In some cases this may mean adjusting the response to suit the characteristics of the offence or the offender. In all circumstances, a deviation from the response suggested by the determining factors must be documented.

22. In certain modes, practices and procedures have evolved to provide further guidance for how to assign a penalty which may involve considering if the violation is the first occurrence, the second occurrence or a subsequent occurrence. Following these practices would not be seen as being in violation of this standard. Other practices which have evolved over time equally provide for a reduction in the penalty amount where the offender requests a review and provides further and better information which would justify a lower rating or ranking. This too would not be seen to violate this standard.

23. Any such "variation" or "deviation" from this standard must be documented.

24. Regardless of how other considerations may operate to alter the results of the three step test, those considerations must be documented and recorded. The better practice is to confer with the Centre for guidance on the exercise of discretion to deviate from the results of the three step test.

Use of Suspension and Cancellation Authority

25. Certain Transport Canada statutes contain provisions⁷ to suspend or cancel operating certificates when holders violate or contravene regulations, rules, orders or directions from the

⁷ *Aeronautics Act* 6.9 (1) If the Minister decides to suspend or cancel a Canadian aviation document on the grounds that its holder or the owner or operator of any aircraft, airport or other facility in respect of which it was issued has contravened any provision of this Part or of any regulation, notice, order, security measure or emergency direction made under this Part, the Minister shall by personal service or by registered or certified mail sent to the holder, owner or operator, as the case may be, at that person's latest known address notify the holder, owner or operator

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Minister. Each of these authorities provide for the Minister to send a notice to the holder of the certificate allowing them to contest the suspension or cancellation at the Transportation Appeal Tribunal of Canada. No suspension or cancellation is effective sooner than 30 days after its issuance. The authority to issue such a suspension is a Ministerial authority and individual enforcement officers will need to identify the actual authority for the issuance of such a suspension or cancellation. A similar burden and responsibility rests with the Minister to present a full case to the Tribunal in support of the Minister's contention that the operating certificate be suspended or cancelled. An action to suspend or cancel should only be taken with the approval of the Functional Director General.

Contraventions Act – Tickets

26. In certain limited circumstances, provision has been made for offences under TC statutes to be handled by way of tickets issued pursuant to the *Contraventions Act*. This option is currently available in a limited way for offences pursuant to the *Transportation of Dangerous Goods Act, 1992* and for certain regulations made under of the *Canada Shipping Act, 2001*. The *Contraventions Regulations* prescribe the provisions for which tickets may be issued and the amounts.

Documentation – Record Keeping

27. Regardless of the penalty selected, the enforcement instrument selection must be documented and a record kept of the decision documenting the three steps. This record must be accessible to the Functional Director General and to the Centre of Enforcement Expertise (Centre).

Exercise of Discretion – Notification and Consultation

28. Decisions on the selection of the appropriate instrument and associated penalty must be taken with due regard as to the requirements for modal, regional and national consistency of approach. To that end, it is critical to notify and advise modal, regional and national

of that decision and of the effective date of the suspension or cancellation, but no suspension or cancellation shall take effect earlier than the date that is thirty days after the notice under this subsection is served or sent.

Canada Shipping Act, 2001 20. (1) Subject to section 20.1, the Minister of Transport may suspend, cancel or refuse to renew a Canadian maritime document if the Minister is satisfied that (e) the holder of the document has contravened a provision of this Act or the regulations that the Minister is responsible for administering

Railway Safety Act 17.4 (5) The Minister may suspend or cancel a company's railway operating certificate if the company has (b) contravened any provision of this Act or the regulations or any rule, order, standard or emergency directive made under this Act;

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enforcement offices of the proposed directions. In some instances, consultation within modal and regional offices may be sufficient, however where there are potentially significant national or modal implications, the exercise of discretion to proceed with a recommended enforcement action requires (as per the Centre's policies or program policies) approval from the Functional Director General.

Minor/Low Risk Contravention

29. Where the contravention is categorized as minor/low risk and where the penalty selected is either a verbal warning or a written warning the discretion may be exercised by the officer with the approval or awareness of the officer's immediate supervisor as appropriate.

30. Where the contravention is categorized as minor/low risk and where the penalty selected is an administrative monetary penalty, the Regional Modal Enforcement Manager must be consulted and approve the penalty. The Regional Modal Enforcement Manager may choose to consult with the Centre through the designated Liaison Officer.

31. Regardless of the penalty selected, the contravention must be documented and a record kept of the decision taken to categorize the contravention and to determine the penalty. This record must be accessible to the functional Director General and to the Centre.

Moderate/Medium Risk Contravention

32. Where the contravention is categorized as moderate/medium risk and where the penalty selected is a written warning the discretion may be exercised by the officer in consultation with the officer's immediate supervisor and with the approval of the Regional Modal Enforcement Manager.

33. Where the contravention is categorized as moderate/medium risk and where the penalty selected is an Administrative Monetary Penalty, the Regional Modal Enforcement Manager must be consulted and approve the penalty. The Regional Modal Enforcement Manager must inform the Regional Director, the Functional Director General and the Centre through the designated Liaison Officer.

34. Regardless of the penalty selected, the contravention must be documented and a record kept of the decision taken to categorize the contravention and to determine the penalty. This record must be accessible to the Functional Director General and to the Centre.

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Serious/High Risk Contravention

35. Where the contravention is categorized as serious/high risk, determination of how to proceed can only be taken following consultation with, and approval of, the enforcement actions by the Functional Director General and the Centre⁸.

36. Regardless of the penalty selected, the contravention must be documented and a record kept of the decision taken to categorize the contravention and to determine the penalty. This record must be accessible to the functional Director General and to the Centre.

⁸ Approval of the Functional Director General and the Centre may be delegated.

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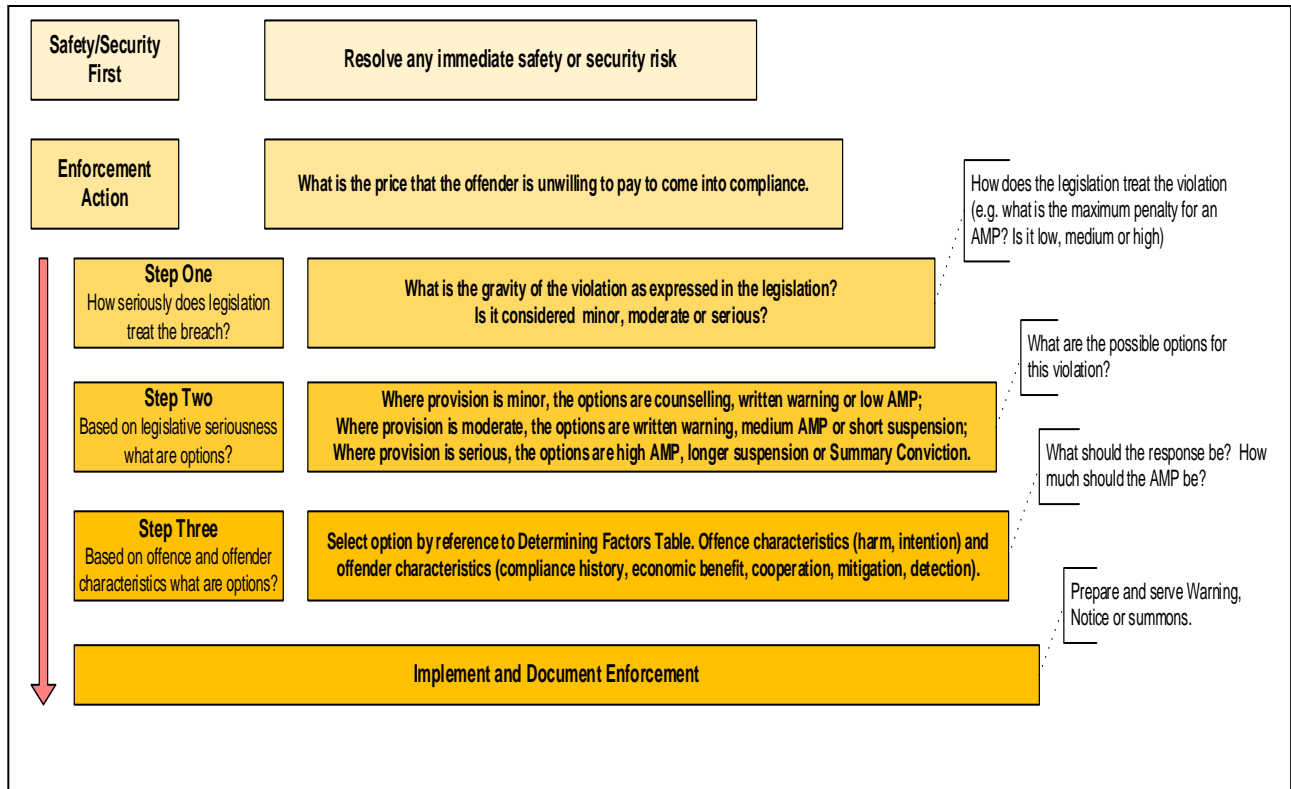
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ANNEX A ENFORCEMENT INSTRUMENT AND PENALTY SELECTION



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Prior to any enforcement action – Resolve any immediate safety or security risk See Desk Book Chapter 2.1

The following must be read in conjunction with sections 20 and 21 above.

- If a breach is defined by legislation as moderate or serious, it cannot be subject only to counselling;
- If a breach is defined by legislation as serious, it **must** be subject to an AMP, suspension or prosecution;
- All enforcement actions (verbal, written, AMP or prosecution) **must** be documented;

Authorities

- For all inspection/investigation activities leading to oral counselling, written warning or AMP, authorities are found in TC statutes, (i.e. entry, interview, document examination and copying, photographs, videos).
- Only when an enforcement officer decides that TC is proceeding by way of prosecution do *Criminal Code* provisions apply, including search warrants, and production orders and only when proceeding by way of prosecution do the provisions related to warning offenders under the *Canadian Charter of Rights and Freedoms* come into play.

Penalty/Enforcement Selection

- Decisions about penalty selection and/or amounts may only be made based upon three factors related to safety/security risk:
 - Legislative seriousness – what is the legislative gravity of the violation as defined in law?
 - Harm – how much harm (people, property, and environment) was caused by breach?
 - Offender characteristics – compliance history, cooperation, remediation, corrective actions taken

All standards (e.g. note taking, interviews etc.) apply to all inspections/investigations regardless of procedure selected.

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TITLE

Standard on Notice of Violation Preparation

SUBJECT

The process for Administrative Monetary Penalties (AMPs) is formally initiated by a Notice of Violation, the authority for which is found under individual statutes. Each statute provides in general terms the requirements for what must be contained in the Notice of Violation and may also refer to regulations where more details may be found about what is to be contained in the Notices of Violation.

A Notice of Violation is the foundation for an Administrative Monetary Penalty. The statutory and regulatory requirements for its preparation must be scrupulously followed. This document

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identifies the standard items that must be contained in individual Notices of Violation in order that they may be in compliance with their governing statutes.

The general rule is that the Notice of Violation must provide sufficient detail to the person who receives it to allow the person to make an informed decision as to how to treat the allegation contained in the violation. It identifies the specific violation (i.e. date, time, location and provision contravened), the person violating, and options for how to pay or contest the allegation. Generally, the more information provided at the earliest stage in the process, the greater the likelihood of payment.

PURPOSE AND SCOPE

The purpose of this standard is to assist Transport Canada (TC) officers in preparing a Notice of Violation to initiate the process for an Administrative Monetary Penalty.

This applies to all TC personnel exercising their enforcement responsibilities in pursuance of their duties relative to any TC statute and/or regulation.

POLICY STATEMENT

It is the policy of TC that its personnel, when carrying out enforcement responsibilities, do so in accordance with the statutory authorities and duties applicable to the functions being carried out.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. TC personnel have the responsibility and duty to enforce the statutory and regulatory requirements of the statutes and regulations for which they have been authorized and to issue and serve Notices of Violation in accordance with the applicable authorities.
2. The Notice of Violation¹ is the initiating document issued and served by the authorized officer on an alleged offender. It informs the person of the allegations and his or her options for how to respond. Only authorized persons may issue and serve Notices of Violation. There are

¹ The term "Notice of Violation" is employed throughout, even though under section 7.1 of the *Aeronautics Act* the term employed is a "Notice of Assessment of Monetary Penalty".

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mandatory elements that must be present in the Notice of Violation and specific provisions related to how the Notice of Violation must be served on the person alleged to be in violation.

3. A Notice of Violation must disclose the authority upon which it is issued, the facts upon which the allegation is based, the provision of the statute or regulation alleged to have been breached, the amount proposed as a penalty and the process by which the offender may pay the penalty. It must also outline the process for contesting the proposed penalty.

4. The best Notice of Violation communicates as comprehensively as possible the entire basis for the violation, the full calculation of the monetary payment and directions for how to either pay the amount or dispute it. Chapter 5.5 contains a model Notice of Violation which may be adapted for use for any Transport Canada Notice of Violation.

GENERAL PROCEDURES

5. The following are the steps a TC enforcement officer must take to proceed to the issuance and service of a Notice of Violation for an Administrative Monetary Penalty.

Step One: Identification of the specific statutory, regulatory or other authority alleged to have been violated by the party. This means relating the actual non-compliant behavior, for which there are reasonable grounds, to a provision in the statute or the regulation.

Step Two: Confirm that the violation is one which may be proceeded with by way of Administrative Monetary Penalty.

Step Three: Identify who has the authority to issue and serve the Notice of Violation and ensure proof of this authority is available.

Step Four: Identify the exact legal entity who is the subject of the Notice of Violation by correct legal name and legal address.

Step Five: Prepare a brief description of the violation sufficient that the alleged violator will be able to identify the non-compliant behavior and relate it to a specific date, location and regulatory provision.

Step Six: Determine what, if any, special rules apply for the service of the Notice of Violation on the legal entity, person, or vessel.

ROLES AND RESPONSIBILITIES

6. Officers are responsible for:
- preparing Notices of Violation in accordance with the provisions of the applicable statute and regulatory authority;

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- b. causing the Notice of Violation to be signed, issued and served on the alleged violator in accordance with the provisions of the applicable statute and regulatory authority;
 - c. seeking approval of the form of the Notice of Violation from the officer's manager.
- 7. Managers are responsible for:
 - a. ensuring that the Notice of Violation, as drafted by the officer, conforms with the provisions of the applicable statute and regulatory authority; and
 - b. where the proposed Administrative Monetary Penalty is 50% or more of the maximum available for the alleged violation, consulting with the Centre of Enforcement Expertise and with the applicable Chief of Enforcement or equivalent.

JUSTIFICATION OF ENFORCEMENT ACTION

- 8. For officers using the Justification of Enforcement Action form, guidance for its completion are found in Annex E. This form can be used both to complement the instrument and penalty selection process as well as to support the preparation of the Notice of Violation.
- 9. Each mode and each statute or regulation under which an administrative monetary penalty is authorized is represented in the Notice of Violation form and the instructions provide guidance for completing the corresponding sections.
- 10. Enforcement personnel will have received specific training on the use of the Administrative Monetary Penalty Notice of Violation during their basic training using the same instructional materials found in Annex E.

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Annex A – Administrative Monetary Penalties Authorities Transport Canada Statutes and Regulations

Aviation/Aeronautics Designated Provisions Column I Violated a Provision	Authority Permitting Administrative Monetary Penalty Use Designation Authority Column II Provision Designated Pursuant to <i>Canadian Aviation Regulations</i>
<i>Canadian Aviation Regulations Schedule II</i>	103.08 (1) The provisions set out in column I of Schedule II to this Subpart are hereby designated as provisions the contravention of which may be dealt with under, and in accordance with the procedure set out in, sections 7.7 to 8.2 of the Act. (2) The amounts set out in column II of Schedule II to this Subpart are the maximum amounts payable in respect of a contravention of the designated provisions set out in column I. <i>Canadian Aviation Security Regulations 2012</i>
<i>Canadian Aviation Security Regulations 2012 Schedule IV</i>	798. (1) A provision set out in column 1 of Schedule 4 is designated as a provision the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act. 799. (1) The provisions of a security measure are designated as provisions the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act. <i>Designated Provisions Regulations SOR/2000-112</i>
<i>Aeronautics Act Subsection 4.83(1.1) Paragraph 4.85(1)(a) Paragraph 4.85(1)(b) Subsection 4.85(3) Schedule 4 of the Designated Provisions Regulations</i>	2. (1) A provision set out in column 1 of an item of a schedule is designated as a provision the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act. (2) The amount set out in column 2 or column 3 of an item of a schedule is prescribed as the maximum amount payable by an individual or corporation, as the case may be, in respect of a contravention of the provision set out in column 1 of the item. <i>Designated Provisions Regulations SOR/2000-112</i>
<i>Canadian Computer Reservation Systems (CRS) Regulations Found in Schedule 1 of the Designated Provisions Regulations</i>	2. (1) A provision set out in column 1 of an item of a schedule is designated as a provision the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act. (2) The amount set out in column 2 or column 3 of an item of a schedule is prescribed as the maximum amount payable by an individual or corporation, as the case may be, in respect of a contravention of the provision set out in column 1 of the item. <i>Identity Screening Regulations SOR/2007-82</i>
<i>Identity Screening Regulations</i>	14. (1) A provision set out in column 1 of the schedule is designated as a provision the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act. (2) The amount set out in column 2 or column 3 of the schedule is prescribed as the maximum amount payable by an individual or corporation, as the case may be, in respect of a contravention of the provision set out in column 1.
Referenced in the Schedule to the regulations ²	

² Note that the process and procedures for notices under the *Identity Screening Regulations* are those set out in the *Designated Provisions Regulations*. **15.** A notice referred to in subsection 7.7(1) of the Act must be in writing and indicate the information prescribed by section 4 of the *Designated Provisions Regulations*.

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Railway Safety

Railway Safety Act

Provisions

Regulations made under the
Railway Safety Act

Instruments made under the
Railway Safety Act
Orders under 7(2) or 19(1);
a rule in force under section
19 or 20 of the Act.

Authority Permitting Administrative Monetary Penalty Use

Railway Safety Administrative Monetary Penalties Regulations

2. (1) A provision of the Act or its regulations that is set out in column 1 of a Part of Schedule 1 is designated as a provision the contravention of which may be proceeded with as a violation in accordance with sections 40.13 to 40.22 of the Act

3. (1) The following instruments are designated as provisions the contravention of which may be proceeded with as a violation in accordance with sections 40.13 to 40.22 of the Act:

- (a) an order made under subsection 7(2) or 19(1) of the Act;
- (b) a rule in force under section 19 or 20 of the Act

Marine Safety

Authority Permitting Administrative Monetary Penalty Use

Canada Marine Act

N.B. There are no provisions designated by the Governor in Council pursuant to the authority in the *Canada Marine Act*, accordingly there are no Administrative Monetary Penalties possible at this time.

Canada Shipping Act 2001

Designated provision,
regulation or instruction

Administrative Monetary Penalties and Notices (CSA 2001) Regulations SOR/2008-97

2.(1) The contravention of a provision of the Act, or of a regulation made under the Act, set out in column 1 of a Part of the schedule is designated as a violation that may be proceeded with in accordance with sections 229 to 242 of the Act and by the issuance of a notice of violation

Marine Security

Authority Permitting Administrative Monetary Penalty Use

Marine Transportation Security Act

32. In sections 33 to 51,
“violation” means a
contravention of a
provision that is designated
as a violation by the
regulations.

Marine Transportation Security Regulations SOR/2004-144

601. (1) The contravention of a provision of the Act set out in column 1 of an item of Schedule 2 is designated a violation that may be proceeded with in accordance with sections 33 to 46, 49 and 50 of the Act.

602. (1) The contravention of a provision of these Regulations set out in column 1 of an item of Schedule 3 is designated a violation that may be proceeded with in accordance with sections 33 to 46, 49 and 50 of the Act.

Other

International Bridges and Tunnels Act

Administrative Monetary Penalties Regulations (International Bridges and Tunnels) SOR/2012-149

- (i) any provision of this Act
or any regulation made
under this Act,
- (ii) any order made under
section 9, 13, 15.1 or 26, or
- (iii) any directive made
under section 17 or 18;

2. (1) The provisions of the Act set out in column 1 of Part 1 of the schedule and the provisions of the *International Bridges and Tunnels Regulations* set out in column 1 of Part 2 of the schedule are designated as provisions the contravention of which is a violation that may be proceeded with in accordance with sections 45 to 55 of the Act.

3. (1) The provisions of an order made under section 9, 13, 15.1 or 26 of the Act and the provisions of a directive made under section 17 or 18 of the Act are designated as provisions the contravention of which may be proceeded with as a violation in accordance with sections 45 to 55 of the Act.

Navigation Protection Act

N.B. There are no provisions designated by the Governor in Council pursuant to the authority in the *Navigation Protection Act* accordingly there are no Administrative Monetary Penalties possible at this time violation and is liable to a penalty established in accordance with the regulations

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Annex B - Authority to Issue and Serve Notices of Violation Transport Canada Statutes and Regulations

Statute	Authority to Issue and Serve Notices of Violation	Proof of Authority
<i>Aeronautics Act</i>	7.7 (1) If the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention, in which case the Minister shall, by personal service or by registered or certified mail sent to the person at their latest known address, notify the person of his or her decision	Proof of internal delegation by Minister of authority to make this decision.
<i>Canada Shipping Act, 2001</i>	229.(1) If the Minister has reasonable grounds to believe that a person or vessel has committed a violation, the Minister may ... (b) issue, and cause to be served on the person or vessel, a notice of violation that names the person, identifies the violation and sets out (a) the penalty for the violation that the person is liable to pay; and (b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.	Proof of internal delegation by Minister of authority to make this decision.
<i>Canada Marine Act</i>	108. (1) The Minister may designate any person or member of a class of persons as an enforcement officer for any of the purposes of this Act or the regulations and shall furnish each person so designated with a certificate of designation setting out the purposes and areas for which the enforcement officer is designated. 129.05 (1) If an enforcement officer believes on reasonable grounds that a person or ship has committed a violation, the officer may issue, and shall cause to be served on the person or ship, a notice of violation	108. (3) In carrying out duties and functions under this Act, an enforcement officer shall, on request, produce the certificate of designation to the individual appearing to be in charge of any ship, vehicle, aircraft, premises or other place or any goods, in respect of which the officer is acting.
<i>International Bridges and Tunnels Act</i>	39. (1) Subject to subsection (6), the Minister or a person designated by the Minister may, for the purpose of ensuring compliance with this Act and any regulation, order or directive made under this Act, 46. If a person designated by the Minister under subsection 39(1) believes on reasonable grounds that a person has committed a violation, he or she may issue and serve on the person a notice of violation that names the person, identifies the violation and sets out (a) the penalty for the violation that the person is liable to pay; and (b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.	39 (2) Every person designated by the Minister shall receive an authorization in the form that may be established by the Minister attesting to the person's designation. On entering any place, the person shall, if requested, produce the authorization to the person in charge of the place.
<i>Marine Transportation Security Act</i>	33.(1) If the Minister has reasonable grounds to believe that a person has committed a violation, the Minister may...	Proof of internal delegation by Minister of authority to make this decision. NB this is different from a

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(b) issue, and cause to be served on the person, a notice of violation that names the person, identifies the violation and sets out

section 22 designation as a security inspector.

(a) the penalty for the violation that the person is liable to pay; and
(b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.

Navigation Protection Act

33. The Minister may designate persons or classes of persons for the purposes of the administration and enforcement of this Act.
39.11 (1) A designated person may issue a notice of violation and cause it to be provided to a person if the designated person has reasonable grounds to believe that the person has committed a violation.

34 (2) On entering a place, the designated person shall, on request, produce to the person in charge of the place a certification in the form established by the Minister attesting to the designation.

Railway Safety Act Railway Safety Administrative Monetary Penalties Regulations

40.11 (1) The Minister may designate persons, or classes of persons, as enforcement officers.
40.14 When a person designated by the Minister under subsection 40.11(1) believes on reasonable grounds that a person has committed a violation, he or she may issue and serve on the person a notice of violation that names the person, identifies the violation and sets out

4. The authorization referred to in subsection 40.11(2) of the Act shall be in the form set out in Schedule 2. Not the same as a designation of a person as a railway safety inspector.

(a) the penalty for the violation that the person is liable to pay; and
(b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review.

...

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Annex C - Contents of Notices of Violation – Limitation Periods Transport Canada Statutes and Regulations

Statute	Contents of Notices of Violation	Limitation Periods
<i>Aeronautics Act</i>	<p>7.7 (1) If the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention, in which case the Minister shall, by personal service or by registered or certified mail sent to the person at their latest known address, notify the person of his or her decision</p> <p>(2) A notice under subsection (1) shall be in a form prescribed by regulation of the Governor in Council and shall, in addition to any other information that may be prescribed, indicate</p> <p>(a) the designated provision that the Minister believes has been contravened;</p> <p>(b) subject to any regulations made under paragraph 7.6(1)(b), the amount that is determined by the Minister, in accordance with any guidelines that the Minister may make for the purpose, to be the amount that must be paid to the Minister as the penalty in the event that the person does not wish to appear before a member of the Tribunal assigned to conduct a review to make representations in respect of the alleged contravention; and</p> <p>(c) the address at which, and the date, being thirty days after the notice is served or sent, on or before which, the penalty must be paid or a request for a review must be filed.</p>	<p>26. No proceedings under sections 7.6 to 8.2 or by way of summary conviction under this Act may be instituted after twelve months from the time when the subject-matter of the proceedings arose.</p>
<i>Canadian Aviation Regulations Section 103.08</i>	<p>(3) A notice issued to a person by the Minister under subsection 7.7(1) of the Act shall specify</p> <p>(a) the particulars of the alleged contravention;</p> <p>(b) that the person on or to whom the notice is served or sent has the option of paying the amount specified in the notice or filing a request for a review with the Tribunal of the alleged contravention or the amount of the penalty;</p> <p>(c) that payment of the amount specified in the notice will be accepted by the Minister in satisfaction of the amount of the penalty for the alleged contravention and that no further proceedings under Part I of the Act will be taken against the person on or to whom the notice in respect of that contravention is served or sent;</p> <p>(d) that, if the person on or to whom the notice is served or sent files a request for a review with the Tribunal, that person will be provided with an opportunity consistent with procedural fairness and natural justice to present evidence before the Tribunal and make representations in relation to the alleged contravention; and</p> <p>(e) that, if the person on or to whom the notice is served or sent fails to pay the amount specified in the notice and fails to file a request for a review with the Tribunal within the prescribed period, that person will be deemed to have committed the contravention set out in the notice.</p>	<p>26. No proceedings under sections 7.6 to 8.2 or by way of summary conviction under this Act may be instituted after twelve months from the time when the subject-matter of the proceedings arose.</p>

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Legal Processes, Practices and Standards

2.4 Standard on Notice of Violation Preparation **REVISED**

Statute	Contents of Notices of Violation	Limitation Periods
Canadian Aviation Security Regulations, 2012 Part 14 SOR/2011-318	<p>800. A notice referred to in subsection 7.7(1) of the Act must</p> <ul style="list-style-type: none"> (a) be in writing; (b) set out the particulars of the alleged contravention; (c) state that the person on whom the notice is served or to whom it is sent has the option of paying the amount specified in the notice or filing with the Tribunal a request for a review of the alleged contravention or the amount of the penalty; (d) state that payment of the amount specified in the notice will be accepted by the Minister in satisfaction of the amount of the penalty for the alleged contravention and that no further proceedings under Part I of the Act will be taken against the person on whom the notice in respect of that contravention is served or to whom it is sent; (e) state that the person on whom the notice is served or to whom it is sent will be provided with an opportunity consistent with procedural fairness and natural justice to present evidence before the Tribunal and make representations in relation to the alleged contravention if the person files a request for a review with the Tribunal; and (f) state that the person on whom the notice is served or to whom it is sent will be deemed to have committed the contravention set out in the notice if the person fails to pay the amount specified in the notice and fails to file a request for a review with the Tribunal within the prescribed period. <p>Designated Provisions Regulations</p> <p>4. A notice referred to in subsection 7.7(1) of the Act must specify</p> <ul style="list-style-type: none"> (a) the particulars of the alleged contravention; (b) that the person on whom the notice is served or to whom it is sent has the option of paying the amount specified in the notice or filing with the Tribunal a request for a review of the alleged contravention or the amount of the penalty; (c) that payment of the amount specified in the notice will be accepted by the Minister in satisfaction of the amount of the penalty for the alleged contravention and that no further proceedings under Part I of the Act will be taken against the person on whom the notice in respect of that contravention is served or to whom it is sent; (d) that the person on whom the notice is served or to whom it is sent will be provided with an opportunity consistent with procedural fairness and natural justice to present evidence before the Tribunal and make representations in relation to the alleged contravention if the person files a request for a review with the Tribunal; and (e) that the person on whom the notice is served or to whom it is sent will be deemed to have committed the contravention set out in the notice if the person fails to pay the amount specified in the notice and fails to file a request for a review with the Tribunal within the prescribed period. 	<p>26. No proceedings under sections 7.6 to 8.2 or by way of summary conviction under this Act may be instituted after twelve months from the time when the subject-matter of the proceedings arose.</p> <p>26. No proceedings under sections 7.6 to 8.2 or by way of summary conviction under this Act may be instituted after twelve months from the time when the subject-matter of the proceedings arose.</p>
Aeronautics Act Subsections 4.83(1.1) Paragraph 4.85(1)(a) Paragraph 4.85(1)(b) Subsection 4.85(3) Canadian Computer Reservation Systems (CRS) Regulations in Schedule 1 Designated Provisions Regulations		

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Legal Processes, Practices and Standards

2.4 Standard on Notice of Violation Preparation **REVISED**

*Identity
Screening
Regulations*
in Schedule to
the regulations³

15. A notice referred to in subsection 7.7(1) of the Act must be in writing and indicate the information prescribed by section 4 of the *Designated Provisions Regulations*.

³ Note that the process and procedures for notices under the *Identity Screening Regulations* are those set out in the *Designated Provisions Regulations*. **15.** A notice referred to in subsection 7.7(1) of the Act must be in writing and indicate the information prescribed by section 4 of the *Designated Provisions Regulations*.

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Legal Processes, Practices and Standards

2.4 Standard on Notice of Violation Preparation **REVISED**

Statute	Contents of Notices of Violation	Limitation Periods
<i>Canada Marine Act</i>	<p>129.05(2) The Minister may establish the form and content of notices of violation, but each notice of violation shall</p> <ul style="list-style-type: none"> (a) name the person or ship believed to have committed the violation; (b) identify the violation (c) set out the administrative monetary penalty that the person or ship is liable to pay; (d) set out the particulars concerning the time for and manner of paying the penalty and the time for and manner of requesting a review; and (e) inform the person or ship that, if they do not pay the penalty or request a review in accordance with the particulars set out in the notice, they will be deemed to have committed the violation and the penalty set out in the notice will be imposed <p>229.(1) If the Minister has reasonable grounds to believe that a person or vessel has committed a violation, the Minister may ...</p> <ul style="list-style-type: none"> (b) issue, and cause to be served on the person or vessel, a notice of violation that names the person or vessel, identifies the violation and sets out <ul style="list-style-type: none"> (i) the penalty, fixed by or within the range fixed by the regulations made under this Part, for the violation that the person or vessel is liable to pay, (ii) the period, being thirty days after the notice is served, within which the penalty must be paid or a review of the notice requested, and (iii) particulars of the manner in which, and the address at which, the penalty must be paid or a review requested. 	<p>128 (2) Proceedings in respect of an offence under this Act may be commenced at any time within, but not later than, one year after the time when the subject-matter of the proceedings arose.</p> <p>241. No notice of violation may be issued more than two years after the day on which the Minister becomes aware of the contravention.</p>
<i>Canada Shipping Act, 2001</i>	<p>(3) The Minister may establish, in respect of each violation, a short-form description to be used in notices of violation.</p> <p>46. If a person designated by the Minister under subsection 39(1) believes on reasonable grounds that a person has committed a violation, he or she may issue and serve on the person a notice of violation that names the person, identifies the violation and sets out</p> <ul style="list-style-type: none"> (a) the penalty for the violation that the person is liable to pay; and (b) particulars concerning the time for paying and the manner of paying the penalty. <p>33. (1) If the Minister has reasonable grounds to believe that a person has committed a violation, the Minister may...</p> <ul style="list-style-type: none"> (b) issue, and cause to be served on the person or vessel, a notice of violation that names the person or vessel, identifies the violation and sets out <ul style="list-style-type: none"> (i) the penalty, fixed by or within the range fixed by the regulations made under this Part, for the violation that the person or vessel is liable to pay, (ii) the period, being thirty days after the notice is served, within which the penalty must be paid or a review of the notice requested, and (iii) particulars of the manner in which, and the address at which, the penalty must be paid or a review requested. 	<p>55. Proceedings in respect of a violation may be instituted not later than 12 months after the time when the subject-matter of the proceedings arose.</p>
<i>International Bridges and Tunnels Act</i>		
<i>Marine Transportation Security Act</i>		<p>27. Proceedings by way of summary conviction may be instituted at any time within, but not later than, two years after the day on which the subject-matter of the proceedings arose.</p> <p>49. No notice of violation may be issued more than two years after the Minister becomes aware of the violation.</p>

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2.4 Standard on Notice of Violation Preparation **REVISED**

Statute	Contents of Notices of Violation	Limitation Periods
<i>Navigation Protection Act</i>	<p>39.11 (1) A designated person may issue a notice of violation and cause it to be provided to a person if the designated person has reasonable grounds to believe that the person has committed a violation.</p> <p>(2) The notice of violation shall</p> <ul style="list-style-type: none"> (a) name the person believed to have committed the violation; (b) identify the acts or omissions that constitute the alleged violation; (c) set out the penalty for the violation that the person is liable to pay; (d) set out the particulars concerning the time and manner of payment; and (e) set out a lesser amount that may be paid as complete satisfaction of the penalty if it is paid within the prescribed time and in the prescribed manner that are specified in the notice <p>(3) A notice of violation shall summarize, in plain language, the rights and obligations under this section and sections 39.12 to 39.23 of the person to whom it is provided, including the right to request a review of the acts or omissions that constitute the alleged violation or of the amount of the penalty and the procedure for requesting the review.</p>	<p>39.23 Proceedings in respect of a violation may be commenced no later than six months after the day on which a designated person becomes aware of the acts or omissions that constitute the alleged violation</p>
<i>Railway Safety Act</i> <i>Railway Safety Administrative Monetary Penalties Regulations</i>	<p>40.14 When a person designated by the Minister under subsection 40.11(1) believes on reasonable grounds that a person has committed a violation, he or she may issue and serve on the person a notice of violation that names the person, identifies the violation and sets out</p> <ul style="list-style-type: none"> (a) the penalty for the violation that the person is liable to pay; and (b) particulars concerning the time for and manner of paying the penalty and the procedure for requesting a review. 	<p>40.22 Proceedings in respect of a violation may not be instituted later than 12 months after the time when the subject matter of the proceedings arose</p>

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2.4 Standard on Notice of Violation Preparation **REVISED**

Annex D - Service of Notices of Violation Transport Canada Statutes and Regulations

Statute	Service of Notice of Violation
<i>Aeronautics Act</i>	<p>7.7 (1) If the Minister believes on reasonable grounds that a person has contravened a designated provision, the Minister may decide to assess a monetary penalty in respect of the alleged contravention, in which case the Minister shall, by personal service or by registered or certified mail sent to the person at their latest known address, notify the person of his or her decision</p> <p>3. (1) This section applies in respect of the following documents:</p> <p>a notice of violation referred to in paragraph 229(1)(b) of the Act; a notice of compliance referred to in section 231 of the Act; and a notice of default referred to in subsection 231.1(1) of the Act.</p> <p>(2) A document may be served on an individual personally, by leaving a copy of it with the individual, or if the individual cannot conveniently be found, with someone who appears to be an adult member of the same household at the last known address or usual place of residence of the individual; or by sending a copy of it by registered mail, courier, fax or other electronic means to the last known address or usual place of residence of the individual.</p> <p>(3) A document may be served on a corporation by sending a copy of it by fax, registered mail or courier to the head office or place of business of the corporation or to the corporation's agent or mandatary; leaving a copy of it at the corporation's head office or place of business with an officer or other individual who appears to be in control of or to manage the head office or place of business or with the corporation's agent or mandatary; or sending a copy of it by electronic means, other than fax, to an individual referred to in paragraph (b).</p> <p>(4) A document may be served on a vessel by delivering a copy of it personally to the master or any other person who is, or appears to be, in charge of the vessel; fixing a copy of it to a prominent part of the vessel; if the vessel's authorized representative is an individual, sending a copy of it by fax, registered mail or courier to the authorized representative; or if the vessel's authorized representative is a corporation, sending a copy of it by fax, registered mail or courier to the authorized representative's head office or place of business, leaving a copy of it at the authorized representative's head office or place of business with an officer or other individual who appears to be in control of or to manage the head office or place of business or with the authorized representative's agent or mandatary, or sending a copy of it by electronic means, other than fax, to an individual referred to in subparagraph (ii).</p> <p>(5) A document that is served by registered mail is deemed to be served on the fourth day after the day on which it was mailed.</p> <p>(6) The following means are sufficient to prove service of a document: in the case of a document transmitted by fax, a proof of transmission produced by the fax machine that sets out the date and time of transmission; or in any other case, an acknowledgment of service signed by or on behalf of the person served, specifying the date and place of service.</p>
<i>Canada Shipping Act, 2001</i>	
<i>Canada Marine Act</i>	As there are no designated provisions, there are no special rules in force addressing service of notices or documents.

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2.4 Standard on Notice of Violation Preparation **REVISED**

International Bridges and Tunnels Act

No specific provisions for how to accomplish service of notice.

701 . (1) This section applies in respect of the following documents:
a notice of violation referred to in paragraph 229(1)(b) of the Act;
a notice of compliance referred to in section 231 of the Act; and
a notice of default referred to in subsection 231.1(1) of the Act.

(2) A document may be served on an individual personally, by leaving a copy of it with the individual, or if the individual cannot conveniently be found, with someone who appears to be an adult member of the same household at the last known address or usual place of residence of the individual; or by sending a copy of it by registered mail, courier, fax or other electronic means to the last known address or usual place of residence of the individual.

(3) A document may be served on a corporation by sending a copy of it by fax, registered mail or courier to the head office or place of business of the corporation or to the corporation's agent or mandatary; leaving a copy of it at the corporation's head office or place of business with an officer or other individual who appears to be in control of or to manage the head office or place of business or with the corporation's agent or mandatary; or sending a copy of it by electronic means, other than fax, to an individual referred to in paragraph (b).

Marine Transportation Security Act

(4) A document may be served on a vessel by delivering a copy of it personally to the master or any other person who is, or appears to be, in charge of the vessel; fixing a copy of it to a prominent part of the vessel; if the vessel's authorized representative is an individual, sending a copy of it by fax, registered mail or courier to the authorized representative; or if the vessel's authorized representative is a corporation, sending a copy of it by fax, registered mail or courier to the authorized representative's head office or place of business, leaving a copy of it at the authorized representative's head office or place of business with an officer or other individual who appears to be in control of or to manage the head office or place of business or with the authorized representative's agent or mandatary, or sending a copy of it by electronic means, other than fax, to an individual referred to in subparagraph (ii).

(5) A document that is served by registered mail is deemed to be served on the fourth day after the day on which it was mailed.

(6) The following means are sufficient to prove service of a document: in the case of a document transmitted by fax, a proof of transmission produced by the fax machine that sets out the date and time of transmission; or in any other case, an acknowledgment of service signed by or on behalf of the person served, specifying the date and place of service.

Navigation Protection Act Railway Safety Act

As there are no designated provisions, there are no special rules in force addressing service of notices or documents.

No specific provisions for how to accomplish service of notice.

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Legal Processes, Practices and Standards

2.4 Standard on Notice of Violation Preparation **REVISED**

Annex E – Notice of Violation Training Materials

Introduction

This guidance assists the individual inspector in completing his or her analysis of the non-compliant behavior in order to determine if the behavior should be subject to a low, moderate or serious penalty.

It supports the use of the Common Notice of Violation in electronic format.

It is an analysis of both the elements of the offence as well as a rating of the characteristics of the offender

It examines what happened as well as the blameworthiness of the offender.

At the end of this assessment the inspector will be in a position to select the enforcement option and finalize the actual penalty.

It is divided into three sections:

- Identification of the contravention and contravener
- Assessment/Rating of Determining Factors and
- Analysis/Conclusions from Assessment

Identification of the Contravention and Contravener

This section prompts the user to select the provision which has been violated, and identify the party who has violated the provision. This is completed through a combination of drop down menus for selection of provisions and free text sections where the user enters information about the contravention and the contravener.

Heading on Form: ***Authority to issue (Select one)***

This is a drop down menu from which the user selects the statutory authority under which the Administrative Monetary Penalty may be imposed.

Choices include: *Railway Safety Act, Canada Marine Act, Canada Shipping Act, 2001, the International Bridges and Tunnels Act.*

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2.4 Standard on Notice of Violation Preparation **REVISED**

Heading on Form: *Date of notice (yyy-mm-dd)*

This drop down box allows the user to select the date of the notice itself. This is not the date of the violation.

Heading on Form: *AMP number (TC file number)*

This is a free text box to accommodate modal file systems associated with enforcement actions.

Heading on Form: *Amount of penalty*

This field will be blank at the time of the preparation of the Notice of Violation, but will be completed after the assessment of the penalty is completed at the end of the form.

Heading on Form: *Due date (yyyy-mm-dd)*

This is a drop down menu allowing the user to select a “due date” by which the contravener may file a request for a review. This normally should be at least 30 calendar days after the notice has been served on the contravener. Users could select a date which accommodates the requirement to serve the contravener.

Heading on Form: *Name of contravener*

This is the legal name of the contravener that will be used in the actual Notice of Violation. It is a free text box.

Heading on Form: *Address*

This is the legal address of the contravener that will be used in order to arrange for service of the Notice of Violation on the contravener. It is a free text box.

Heading on Form: *Name of contact*

This is an optional free text box for those operations which have a contact person shown for the contravener.

In the case of AMPs issued under the *Canada Shipping Act, 2001*, this may be the Authorized representative.

Violation

In this next section the user will select the details related to the contravention.

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2.4 Standard on Notice of Violation Preparation **REVISED**

Heading on Form: *Identify statute or regulation that has been contravened*

This is a drop down menu from which the user will select the specific legislation that has been contravened. The choices are:

- *Canada Shipping Act, 2001*
- *Cargo, Fumigation and Tackle Regulations*
- *Collision Regulations*
- *Load line Regulations*
- *Marine Personnel Regulations*
- *Special Purpose Vessels Regulations*
- *Vessel Certificates Regulations*
- *Vessel Registration and Tonnage Regulations*

Heading on Form: *Section number of actual provision contravened*

Once the legislation has been selected the user will be asked to select the specific provision that has been contravened from a drop down menu of the section numbers for which administrative monetary penalties are permitted.

Upon selection of the provision from the drop down list, both the long form description of the violation and the short form description of the contravention are automatically populated in the form.

At any time the user may return and select a different provision, which will change both the long and the short form descriptions associated with that new selection.

Relevant Facts

In this section the user will complete the sections related to his or her authority to proceed by way of Notice of Violation, including his or her name, and title.

The relevant section number of the provision contravened will be populated based on the selection in the previous section and the user will be required to complete, free text, the location of the violation. From a drop down menu the user will indicate the date of the contravention and will also enter, free text, the time of the violation (optional).

Heading on Form: *Particulars of the violation, including what was observed by the inspector, where an inspection was conducted*

In this section the inspector using free text inserts a brief description of the contravention sufficient that the alleged contravener will be able to identify the non-compliant behavior and relate it to a specific date, location and regulatory provision.

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2.4 Standard on Notice of Violation Preparation **REVISED**

Assessment/Rating of Determining Factors

Heading on Form: *Based on my review of this matter I believe:*

In this section the inspector reviews all available information related to the offence and the offender in order to assess which enforcement tool may be the most appropriate to cause the offender to avoid repeating the behavior in the future and, where necessary to denounce the conduct sufficiently that the Canadian public has confidence in the safety and security of the transportation system

The chart below summarizes the assessment to be undertaken by the inspector for each event.

DETERMINING FACTORS TABLE*			
Factor	Column I	Column II	Column III
OFFENCE CHARACTERISTICS (i.e. impact)			
I.	No harm	Slight property harm	Property harm or any personal harm
II. Degree of negligence or deliberateness	Purely negligent	Reckless as to consequences	Deliberate
OFFENDER CHARACTERISTICS (i.e. potential to reoffend)			
III. Compliance History	None similar	Prior warning for similar	Prior AMP for similar
IV. Economic Benefit	None	Slight	Moderate or greater
V. Mitigation of harm	Effects mitigated	Some effects mitigated	Slight or no mitigation
VI. Cooperation with TC	Fully cooperative Admits responsibility	Incomplete or difficult cooperation	No cooperation
VII. Detection of contravention	Reported by offender	Discovered during routine inspection	Discovered after extensive effort
* The headings (e.g. "Slight property harm", "No cooperation", "Reckless as to consequences") in this table refer to the supporting sections in the Deskbook which detail their individual characteristics and assist inspectors in determining the actual rating.			

The next section of the form asks the inspector to rate each of these seven factors, by selecting from a drop down menu for each factor and where the inspector wishes to elaborate on the reasons for his or her selection, a free text box for greater details.

Harm

Heading on Form: *Actual or potential harm*

This factor assesses whether the violation or non-compliant behavior caused or was responsible for any harm to people, property or the environment. There are three ratings: low, moderate or serious. The harm to be considered is harm that but for the violation would not have occurred.

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2.4 Standard on Notice of Violation Preparation **REVISED**

Did the violation cause or contribute to harm to people (physical, disruption or inconvenience)?
Did the violation harm property either through destruction of property or rendering it unsuable?
Did the violation harm the environment by permitting, or directly contributing to a release into the environment?

The three ratings reflect the relative degree of harm that was caused.

Inspectors must indicate which of the three, in their opinion based upon the results of their inspection, including all relevant information, applies to the violation:

1. The harm occasioned by the violation was nil or trivial, therefore this factor is rated low
2. The harm occasioned by the violation was more than trivial, with no harm to any person therefore this factor is rated moderate
3. The harm occasioned by the violation was substantial or resulted in harm to persons therefore this factor is rated serious.

Details of the assessment of the harm:

Intentionality – Negligence, Deliberateness

Heading on Form: *Intention or Negligence*

This factor assesses the degree to which the violation was a result of an accidental (negligent) event which could likely not have been foreseen, or whether the offender should have known that it could have occurred and was willing to take the risk that the behavior would not cause the harm, or whether the offender was fairly certain or knew that there were risks to the behavior and deliberately chose the course of action which resulted in the violation.

The three ratings reflect the degree of intentionality or deliberateness in the conduct.

Inspectors must indicate which of the three, in their opinion based upon the results of their inspection, including all relevant information, applies to the violation:

1. The actions of the offender in the violation displayed negligence rather than deliberateness, therefore this factor is rated low

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2.4 Standard on Notice of Violation Preparation **REVISED**

2. The actions of the offender in the violation displayed more than mere negligence amounting to a recklessness as to the consequences, but short of deliberate, therefore this factor is rated moderate
3. The actions of the offender in the violation demonstrated deliberated conduct with a disregard for the safety of others, therefore this factor is rated as serious

Details of the assessment of the intentionality:

Compliance History

Heading on Form: *Compliance History*

This factor applies to the character of the offender whether personal or corporate by examining the history that the offender may have with relation to relevant or similar non-compliant behavior. A certain degree of interpretation is required on how persuasive this factor can be. Where the prior history discloses identical non-compliance on a repetitive basis that is recent, then that history is significant and serious. Where there is no prior history of any non-compliance then that too is significant. Where the history is not directly related, or not recent, it still cannot be said that there is no history. The test is whether the inspector is of the view that the offender, having had prior non-compliances should have profited from the prior enforcement actions to have avoided the current violation.

The three ratings reflect the degree to which the offender should have learned or could have learned from prior non-compliance.

1. The relevant prior compliance history of this offender shows no similar prior offence history, therefore this factor is rated low
2. The relevant prior compliance history of this offender shows some similar prior offence history, therefore this factor is rated moderate
3. The relevant prior compliance history of this offender shows a similar prior offence history (more than one), therefore this factor is rated serious

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2.4 Standard on Notice of Violation Preparation **REVISED**

Details of the assessment of the compliance history:

Economic Benefit

Heading on Form: *Competitive or economic benefit*

This factor tries to assess whether the risk that the offender took, either accidentally or deliberately which resulted in the non-compliance was done with a view or continued knowing that it was providing an economic benefit or a competitive advantage to the company or person. By not training employees on a recurrent basis, did this benefit the company by allowing them to avoid the costs of training? By not requiring employees to ensure that cargo was adequately screened, did this give the company an advantage over other companies by lowering their relative costs to competitors. Did it allow the offender to offer a lower cost service than others?

The three ratings reflect the degree to which the non-compliant behavior provided an incentive (economic benefit) to the company to continue the practice.

1. The violation committed by the offender did not provide any economic or competitive benefit to the offender, therefore this factor is rated low
2. The violation committed by the offender provided some economic or competitive benefit to the offender, therefore this factor is rated moderate
3. The violation committed by the offender provided economic or competitive benefit to the offender, therefore this factor is rated serious

Details of the assessment of the economic benefit

Mitigation of the Non-Compliant Behaviour

Heading on Form: *Efforts to mitigate or reverse effects*

This factor applies to the offender to permit the inspector to assess whether there were any long-lasting consequences to the non-compliance. Simply put, did the offender clean up the

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2.4 Standard on Notice of Violation Preparation **REVISED**

mess if any, caused by the non-compliant behavior? By the time the violation came to the attention of the regulator, had the violator changed its practices to ensure that it would never happen again. Had the offender “learned its lesson”? On the other hand did the offender take no steps to remedy the underlying causes of the problem, much less clean up the results and was the event likely to happen again. Had the offender already assimilated the need to change its practices?

The three ratings reflect the degree to which the offender had directly taken steps to mitigate any harm from the non-compliance and put in place steps to ensure it would not happen again.

1. The offender took immediate steps to mitigate the harm of the violation, therefore this factor is rated low
2. The offender took some steps to mitigate the harm of the violation, therefore this factor is rated moderate
3. The offender took virtually no steps to mitigate the harm of the violation, therefore this factor is rated serious

Details of the assessment of the mitigation

Cooperation with the Regulator/Inspector/Investigator

Heading on Form: Assistance to regulator

This is an assessment of the degree to which the offender is willing to work with the regulator, in the form of inspector in trying to get to the root of the non-compliant behavior so that it can be avoided in the future. Where the offender is willing to support the inspector in making available information, resources or personnel to assist him or her in trying to fully grasp what had occurred, then this strongly suggests that the offender will be equally willing to take steps to avoid reoffending. Where however, the relationship is confrontational or difficult, this may suggest that there may be other elements of non-compliance and that the offender is trying to avoid responsibility for their role in a safe and secure transportation system.

The three ratings reflect the degree to which the offender is willing and demonstrates cooperation during the course of the inspection or investigation.

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1. The offender was fully cooperative with the regulator throughout the inspection and investigation, therefore this factor is rated low
2. The offender was cooperative to a limited extent with the regulator throughout the inspection and investigation, therefore this factor is rated moderate
3. The offender was not cooperative with the regulator during the inspection and investigation, therefore this factor is rated serious

Details of the assessment of the offender cooperation

Contravention Detection

Heading on Form: *Attention of regulator*

This factor assesses how much effort had to go into determining that a contravention had occurred. There is a cost to safety and security and when industry is willing to identify contraventions which amount to unsafe practices that are non-compliant, this allows inspection resources to be applied elsewhere. On the other hand where contraventions are only discovered after the fact of an event resulting in harm where the non-compliance had been going on for some time and the offender took steps to prevent its detection this suggests a negative attitude towards safety.

The three ratings here reflect the degree to which the non-compliant behavior was identified by the offender as a tool to allow them to enhance their safety practices. It is a proxy for a learning organization.

1. The violation was reported by the offender to the regulator without any prompting, therefore this factor is rated low.
2. The violation was discovered during the course of an inspection or reported to Transport Canada by a third party, therefore this factor is rated moderate.
3. The violation was only discovered as a result of a report to responsible regulatory parties of harm having occurred, therefore this factor is rated serious.

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Details of the assessment of the detection of the contravention

Analysis/Conclusions from Assessment

In this last section a summary of how the determining factors assessment is provided. Where a factor is rated as low a numerical value of 1 is assigned; where moderate: 2; and where high: 3.

These seven factors are then averaged to provide a score out of 3. This is a tool to assist in assessing which instrument to be used for the enforcement and where an Administrative Monetary Penalty is selected, what the amount of the penalty should be.

Below the Penalty Calculation Box the form has been populated with the gravity or seriousness rating assigned to the provision as well as the legislated minimum and maximum amounts for the contravention.

For each event the inspector will have rated each factor as low, moderate or serious.

The following rules apply:

1. Where any factor is rated as Serious, then the least severe option or penalty is not available (e.g. if it is a minor violation as identified in the statute/regulation, then a verbal warning is not permitted)
2. Where the assessment of the seriousness of the offence and the offender result in all factors as low, then the least serious penalty may be utilized.
3. Where the assessment results in from 1 – 3 factors rated as moderate, then the penalty must not be the least severe penalty.
4. Where the assessment result in 4 or more factors as serious, then the penalty must be the most severe for that category.

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TITLE

Standard on Transitions – Safety, Security & Environmental Concerns, Inspections and Investigations

SUBJECT

Transport Canada (TC) officers exercising their authorities during inspection and investigation activities must remain mindful of the extent of the authorities they may exercise during the course of their duties. These authorities may differ based upon the nature of the activity in which they are engaged. They may also change during the course of the enforcement intervention from an inspection to an investigation. This chapter assists officers in determining how and when that transition occurs.

The general rule is that TC officers only exercise the authorities that they have been authorized to exercise by the Minister as expressed by the statute and regulations pursuant to which they have been authorized. Some authorities are predominantly inspection authorities and some are investigation authorities.

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PURPOSE AND SCOPE

The purpose of this standard is to assist TC officers in exercising the authorities they have been authorized to exercise by the Minister pursuant to the statutes and regulations under which they have been authorized.

This applies to all TC officers exercising their enforcement responsibilities in pursuance of their duties relative to any TC statute and/or regulation when there is a transition from:

1. Discovery of any safety, security or environmental concern to an inspection or investigation;
2. Inspection to an administrative investigation; or
3. Inspection to a penal investigation.

POLICY STATEMENT

It is the policy of TC that its officers, when carrying out enforcement responsibilities, do so in accordance with the statutory authorities and duties applicable to the functions being performed, regardless of whether they are exercising an inspection or an investigation authority.

POLICY REQUIREMENTS/DEFINITIONS

1. **SAFETY SECURITY OR ENVIRONMENTAL CONCERN:** Something discovered by an officer during the course of an inspection or investigation which causes the officer, based upon his or her training and experience, to assess the risk of harm to safety, security or the environment pursuant to authorities. The officer, where authorized to do so by statute or regulation, may act to address the safety, security or environmental concern.
2. **INSPECTION:** Examination or verification by officers of a place, activity or item through a planned sequence of actions aimed at verifying compliance with a regulatory regime. Inspection authorities and powers are found within various acts and regulations administered by TC.
3. **ADMINISTRATIVE INVESTIGATION:** A non-penal investigation resulting from an incident or discovery of non-compliance. The predominant purpose of such an investigation is to uncover facts that led to certain events or cases of non-compliance, identify causes, document a case and address the situation with an appropriate enforcement response (other than prosecution). Such investigations will generally be conducted using statutory inspection-based powers and authorities..

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4. **PENAL INVESTIGATION:** An investigation where the predominant purpose of the inquiry is to establish a penal liability (i.e. to gather evidence of a specific offence with a view to supporting penal charges and a prosecution). Tools to conduct penal investigations are typically found in the *Criminal Code* and include search warrants, production orders and the use of caution statements.

TRANSITION FROM SAFETY SECURITY OR ENVIRONMENTAL CONCERN TO INSPECTION

1. In the presence of a safety, security or environmental concern, officers are expected to assess the risk in accordance with the risk assessment tool set out in **Chapter 2.1 Standard on Immediate Harm Reduction – Risk Assessment**.
2. Officers are expected to apply a safety, security or environmental impact reduction measure such as an order, directive, etc., to reduce the risk to an acceptable level. **Chapter 2.2** of the Desk Book sets out the procedures for completing the required documentation.
3. Officers are expected to document the safety, security or environmental concern as well as any remedial measures ordered to be able to substantiate their responses and any following steps.
4. Officers are expected to continue and complete their inspection to ensure that there are no other unidentified safety, security, or environmental issues remaining, and take all appropriate remedial actions to mitigate or eliminate safety concerns where the safety, security or environmental concern comes within the terms of the applicable statutory authorities to address the risk of harm.
5. This process applies equally to an investigation (administrative or penal). If there is the discovery of a safety, security or environmental concern during an investigation, officers are expected to assess the risk and to address it as appropriate according to the procedure. Once the concern is addressed and the risk is mitigated to an acceptable level, then the officers are expected to continue and complete their inspection or investigation, as the case may be.

TRANSITION FROM AN INSPECTION TO AN ADMINISTRATIVE INVESTIGATION

6. In the presence of a safety, security or environmental concern, officers are expected to assess the risk in accordance with the risk assessment framework set out in **Chapter 2.1 Standard on Immediate Harm Reduction – Risk Assessment**.
7. Officers are expected to apply a safety, security or environmental impact reduction measure such as an order, directive, etc., to reduce the risk to an acceptable level. **Chapter 2.2** sets out the procedures for completing the required documentation.

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8. Officers are expected to document the safety, security or environmental concern as well as any remedial measures ordered, to substantiate their responses and the following steps.
9. In the presence of non-compliance, officers are expected to assess the non-compliance, including the risk of further harm in accordance with the provisions of **Chapter 2.3**.
10. If at the completion of the inspection there is enough evidence of non-compliance to consider the use of an administrative enforcement response, the officers are expected to consult accordingly and to implement the chosen response.
11. If at the conclusion of an inspection, it is believed that further evidence of non-compliance must be collected in order to substantiate an administrative enforcement response, officers may proceed with an administrative investigation to collect the missing elements.
12. Officers are expected to rely on statutory inspection-based authorities to conduct administrative investigations, not *Criminal Code* investigative tools (such as search warrants and production orders) or Charter cautions as the measure intended to be applied is administrative and non-penal. The administrative investigation is in reality an enhanced inspection, targeted at documenting a non-compliance detected through the inspection to substantiate the application of an administrative enforcement response.
13. Officers are expected to document the non-compliance and collect evidence/information to substantiate the application of an administrative enforcement response.
14. In the presence of a situation pointing to multiple non-compliances that could reasonably lead the officers to both administrative response and prosecution, officers are advised to exercise caution. Only where the officer has determined that the predominant purpose of the investigation has become penal (i.e. with a view to initiating a prosecution) should the officer consider using the process of evidence gathering associated with penal investigations below. Where there is little likelihood that the officer will choose to recommend a prosecution, the predominant purpose remains administrative. The mere possibility that an officer could or might propose a penal consequence is insufficient to change the predominant purpose to a penal purpose.

TRANSITION FROM AN INSPECTION TO A PENAL INVESTIGATION

15. If the risk of an event is imminent officers are expected to apply the appropriate measures such as orders, directives, etc., irrespective of potential enforcement action.
16. If the risk is not imminent or was immediately reduced to an acceptable level, officers are expected to document the mitigating measure applied and to complete their inspection as above.

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17. In the presence of an offence which may require a penal investigation, officers are expected to assess the non-compliance following the terms of **Chapter 2.3 Standard on Instrument and Penalty Selection – Graduated Approach** and to consult in accordance with modal/regional protocols.

18. The discovery of an offence during an inspection will not, in most cases, tip the balance in favor of a penal investigation if the officers' predominant purpose remains compliance monitoring. Officers should, in the vast majority of cases, complete the inspection before turning their minds to conducting a penal investigation.

19. During an inspection, officers may seize¹ evidence of an offence, as per statutory authorities while remaining in inspection mode. Officers should continue with the remaining portions of the inspection as per their inspection plan or check-list. An inspection is a whole process and should not end when the officers discover the first irregular or non-compliant element.

20. Evidence/information validly obtained during an inspection may later be used as grounds to conduct a penal investigation (e.g. may form grounds to obtain a search warrant) but is not automatically admissible at trial. Rules governing admissibility of evidence will dictate whether or not the evidence can be used during a prosecution.

21. Exceptionally, an inspection may be stopped and a penal investigation may begin where the offence uncovered alters the officer's predominant purpose in favour of immediately establishing penal liability. Officers must forgo using inspection powers (including compelled questioning) in favour of judicial authorizations² and Charter caution interviews/statements.

22. If at the conclusion of an inspection it is believed that further evidence of the offence must be collected in order to make a case for prosecution and that a clear decision is made to begin a penal investigation, officers may proceed with the use of penal investigative powers to collect the missing elements.

23. The beginning of a penal investigation marks a change in focus from compliance monitoring (and ensuring compliance via administrative means) to establishing penal liability by way of a prosecution. A search warrant may be required to search for and seize further evidence of the offence (i.e. evidence not already obtained during the inspection). Individuals

¹ Pursuant to the Charter, a seizure occurs when state agents take something from someone without that person's consent. It does not have bearing on whether the purpose is penal or administrative.

² An onsite warrantless search may also be conducted in the presence of exigent circumstances (i.e. where there is sufficient grounds to obtain a search warrant but doing so is likely to result in the loss or destruction of evidence.)

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targeted by the penal investigation must be Charter cautioned prior to asking questions and taking statements.

24. A follow-up inspection should be conducted to monitor compliance against the remedial measures (if any were imposed) or assess implementation progress of such measures. Follow-up inspections must not however be utilized to gather further evidence of offences being investigated.

PENAL INVESTIGATION CRITERIA

25. In summary, steps to determine if a penal investigation is warranted should include, but are not limited to:

- a. Are there reasonable grounds to believe that non-compliance has occurred or is occurring?
- b. Is the non-compliance subject to charges/prosecution under an Act?
- c. Does assessment of the non-compliance in terms of **Chapter 2.3 Standard on Instrument and Penalty Selection – Graduated Approach** direct the inquiry towards prosecution as an appropriate enforcement option?
- d. Have administrative enforcement responses been ruled out?
- e. Following consultation, is there a clear decision to begin a penal investigation i.e. is the predominant purpose shifting to establish penal liability?
- f. Is there a need to collect further evidence to substantiate an offence?
- g. If physical evidence is required by way of a search warrant, consider whether the person (suspect) or the regulated entity enjoy a reasonable expectation of privacy (REP) with respect to the information, thing or place to be searched? (REP includes contextually “diminished” REP.) In a regulatory setting, persons generally enjoy a diminished REP in business premises, vessels, and vehicles.
- h. If questioning or taking a statement from the alleged offender is being considered, a Charter caution will be required to be read to ensure that answers and statements are provided to you voluntarily for use as evidence against a defendant during the prosecution.

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SUMMARY – TRANSITION FROM INSPECTION TO INVESTIGATION (ADMINISTRATIVE OR PENAL)

ADMINISTRATIVE INVESTIGATION (FACT FINDING)

CORRECTIVE MEASURES / ADMINISTRATIVE
MONETARY PENALTIES / SANCTIONS

USE OF INSPECTION POWER

The predominant purpose of an inspection is to verify whether the regulated entity is complying with various acts and/or regulations. For that purpose, as a designated inspector, you are granted entry powers as well as extensive powers to examine things, request all relevant records, etc.

The regulated entity being inspected and every person found in the place are required to give you all reasonable assistance to enable you to carry out your inspection, and the failure to do so may amount to an offence or obstruction.

Where it is believed that non-compliance should lead to a form of administrative enforcement response (i.e. administrative monetary penalties (AMPs), corrective action, suspension of privilege), inspection powers may be relied upon to conduct an administrative investigation for the purpose of gathering evidence of non-compliance to be presented at a Transportation Appeal Tribunal of Canada (TATC) proceeding should the regulated entity seek review of your decision.

The discovery of a possible offence during the inspection will not generally tip the balance in favour of a penal investigation if your predominant purpose continues to be to support safety, security and compliance, i.e., if your objective is to continue and complete your inspection.

There is no Charter requirement to obtain warrants or caution persons if the purpose of the investigation is to document and establish a regulatory non-compliance that will be remedied using an administrative enforcement response

PENAL INVESTIGATION (FAULT FINDING)

CHARGES / PROSECUTION / TICKETING

USE OF WARRANTS / PRODUCTION ORDERS /
CHARTER CAUTION

The predominant purpose of the penal investigation is to establish penal liability, i.e. to gather evidence of an alleged offence for a possible prosecution. You must not rely on the continued use of inspection powers to conduct penal investigations. You may need to obtain a *Criminal Code* search warrant or production order to gather remaining pieces of evidence and information, but anything properly obtained during the inspection may be utilized to advance your penal investigation (e.g. information obtained during the inspection may form the basis for your grounds to apply for a search warrant).

Individuals under penal investigations and who may be charged personally with an offence must be cautioned and made aware of their rights under the *Canadian Charter of Rights and Freedoms* (Charter) prior to questioning. In summary, steps to determine if a penal investigation is warranted should include, but are not limited to:

1. Are there reasonable grounds to believe that an offence has occurred or is occurring?
2. Is the offence subject to charges/prosecution under the Act?
3. Does the risk assessment and graduated approach models direct you towards prosecution as an appropriate enforcement option?
4. Have you ruled out voluntary and administrative enforcement responses?
5. Following consultation, is there a clear decision to begin a penal investigation i.e. is the predominant purpose shifting to establish penal liability?
6. Is there a need to collect further evidence to substantiate an offence for the purpose of building a prosecution case?

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2.6 Standard on Prosecution of Summary Conviction and Indictable Offences **REVISED**

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TITLE

Standard on Prosecution of Summary Conviction or Indictable Offences

SUBJECT

Certain statutes for which the Minister of Transport has responsibility specify offences that may be proceeded with by way of summary conviction or by way of indictment. The decision to recommend proceeding by way of prosecution summary conviction or indictment must be taken in accordance with the provisions set out below. Once the file is in the hands of the prosecution office, it is their determination as to whether to proceed with the prosecution.

PURPOSE AND SCOPE

The purpose of this standard is to provide assistance to Transport Canada (TC) officers on the decision to proceed by way of summary conviction or indictment.

A list of offences in respect of which proceedings may be by way of summary conviction is found in Annex A. A list of offences in respect of which proceedings may be by way of indictment is found in Annex B.

POLICY STATEMENT

It is the policy of TC that decisions to recommend proceeding by way of summary conviction are taken consistent with the terms of this standard.

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2.6 Standard on Prosecution of Summary Conviction and Indictable Offences **REVISED**

POLICY REQUIREMENTS/GUIDELINES

1. Proceeding with a prosecution by either summary conviction or indictment is reserved for serious offences which cannot effectively be dealt with administratively. Summary conviction and indictable proceedings are criminal or penal by nature. Proceeding by way of indictment is reserved for the most serious of offences.
2. The decision to recommend proceeding by way of summary conviction or indictment should only be taken where, following application of *Chapter 2.3 Standard on Instrument and Penalty Selection – Graduated Approach*, the assessment results in a finding of High and only following a consultation with the Regional Director, the functional Director General, the Centre of Enforcement Expertise and Legal Services.
3. A recommendation as to whether to proceed by way of summary conviction or indictment should only be made after a comprehensive Case Report has been completed. See *Chapter 2.8 for Standard on Preparation of Case Reports (often referred to as a Crown Brief or Report To Crown Counsel)*
4. The decision to proceed by way of indictment or summary conviction (hybrid offence) is the decision of Crown Counsel and is typically made prior to the accused entering a plea, upon the presentation of the information in court charging the accused with the offence.
5. In hybrid offences, Crown Counsel has the discretion to proceed by summary conviction or indictment. It is not the discretion of the investigating officer. This discretion allows Crown Counsel the flexibility of taking the specific circumstances of a case into account to ensure that the interests of justice, including the public's interest in effective and efficient law enforcement are best served. However, Crown Counsel will expect advice on the approach he or she may take.
6. Where an accused is charged with a number of offences arising out of the same transaction, Crown Counsel may also consider making elections that avoid a multiplicity of proceedings. Such a course may benefit the accused, by reducing his or her court appearances, as well as serve the interests of the administration of justice. This approach will be beneficial not only at the trial level, but also in the event of an appeal. This is the prerogative of the Crown.

ROLES AND RESPONSIBILITIES

Officers

7. Officers are responsible for:

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- a. completing a comprehensive investigation of any non-compliance for which they propose to recommend proceeding by way of prosecution;
- b. completing a Case Report consistent with the terms of Chapter 2.8; and
- c. delivering a completed Report to Crown Counsel (RTCC) to the responsible manager for review and approval not less than 120 days after the event.
- d. provide Crown Counsel support including additional investigation if required.

Managers

8. Managers are responsible for:
 - a. reviewing any recommendation received from an officer that non-compliant behavior be proceeded with by way of a prosecution;
 - b. endorsing or determining that proceeding by way of prosecution is not appropriate by examining available information and evidence following the provisions of **Chapter 2.3 Standard on Instrument and Penalty Selection – Graduated Response**.
 - c. documenting in writing their endorsement or determination that it not proceed by way of summary conviction and recommending alternative proposed enforcement action;
 - d. submitting their recommendation in writing not less than [30 days] after receipt of the recommendation for review by the Regional Director, Enforcement.
 - e. Although management may have access to the RTCC, it is shared for viewing only and on a need-to-know basis. The officers must maintain full control on the drafting and preparation of the RTCC. A recommendation to amend a draft RTCC must be discussed and accepted by the drafting officer.

Chief of Enforcement or Equivalent

9. Chiefs of Enforcement are responsible for:
 - a. reviewing any recommendation received from a manager regarding the endorsement or determination in relation to proceeding *by way of prosecution*.
 - b. engaging the Centre of Enforcement Expertise *and Legal Services* to review the recommendation regarding a proposed proceeding by way of *prosecution*;
 - c. ensuring that Headquarters' enforcement function is engaged in reviewing the recommendation in conjunction with the Centre of Enforcement Expertise;
 - d. receiving the results of the Centre of Enforcement Expertise review;
 - e. endorsing an enforcement action decision, documenting that recommendation and advising the Regional Manager to take the necessary steps to engage Crown Counsel.

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ANNEX A

Summary Conviction Offences

Transportation of Dangerous Goods Act, 1992, SC 1992, c 34

- 33.** (1) Every person is guilty of an offence who contravenes a provision of
- (a) this Act;
 - (b) a direction issued under paragraph 7.1(a), subsection 9(2) or (3), section 17, paragraph 19(1)(a) or (b) or subsection 32(1);
 - (c) the regulations;
 - (d) a security measure; or
 - (e) an interim order.

- (2) Every person who commits an offence under subsection (1)

(b) is liable on summary conviction to a fine not exceeding \$50,000 for a first offence, and not exceeding \$100,000 for each subsequent offence.

Marine Transportation Security Act, SC 1994, c 40

- 9.** Every operator who does not carry out security measures that the operator is required to carry out, and every person who wilfully obstructs a person who is carrying out security measures, is guilty of an offence and liable

(b) on summary conviction

- (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
- (ii) in the case of a corporation, to a fine not exceeding \$100,000.

- 11.** Every operator who does not carry out security rules and conditions approved by the Minister in relation to the operator, and every person who wilfully obstructs a person who is carrying out security rules, is guilty of an offence and liable

(b) on summary conviction

- (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
- (ii) in the case of a corporation, to a fine not exceeding \$100,000.

- 17.** An operator of a vessel that contravenes a direction is guilty of an offence and liable

(b) on summary conviction

- (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
- (ii) in the case of a corporation, to a fine not exceeding \$100,000.

- 20.** (1) A screening officer may require a person or any goods to undergo authorized screening before the person or goods come on board a vessel or enter a restricted area and, where so required,

(a) the person shall not board the vessel or enter the restricted area unless the person has undergone the authorized screening; and

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(b) no person shall bring the goods on board the vessel or into the restricted area unless the goods have undergone the authorized screening.

Screening after boarding or in restricted areas

(2) A screening officer may require a person on board a vessel or in a restricted area to undergo authorized screening and, if the person refuses,

(a) the officer may order the person to leave the vessel or restricted area and to remove from it any goods that the person took or had placed there; and

(b) the person shall leave the vessel or restricted area and remove or permit the removal of the goods immediately or, in the case of a vessel that is not docked, at the first reasonable opportunity.

Circumventing authorized screening

(5) Every person who contravenes subsection (2) or who wilfully circumvents authorized screening in any manner is guilty of an offence and liable

(b) on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both.

Assistance to inspectors

25. (1) The operator of any vessel or marine facility boarded or entered by a security inspector who is carrying out functions under this Act, and every person found there, shall give the inspector all reasonable assistance in that person's power to enable the inspector to carry out those functions.

Obstruction of inspectors

(2) When a security inspector is carrying out functions under this Act, no person shall fail to comply with any reasonable request of the inspector or otherwise wilfully obstruct the inspector.

Other prohibitions

(3) No person shall

(a) knowingly make any false or misleading statement or knowingly provide false or misleading information to a security inspector or other person carrying out functions under this Act;

(b) wilfully destroy any record or document required to be kept under this Act;

(c) make a false entry in a record required to be kept under this Act with intent to mislead, or wilfully omit to make any entry in such a record;

(d) remove, alter or interfere in any way with anything seized by a security inspector, except with the inspector's permission; or

(e) wilfully operate a vessel that has been detained under this Act, unless authorized to do so under this Act.

Offence

(4) Every person who contravenes this section is guilty of an offence and liable

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(b) on summary conviction

- (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
- (ii) in the case of a corporation, to a fine not exceeding \$100,000.

Canada Shipping Act, 2001, SC 2001, c 26

37. Every person who contravenes section 23 (destruction of documents, fraud, obstruction, false or misleading information or statement, movement of detained vessel) commits an offence and is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or to both.

38. (1) Every person who, or vessel or oil handling facility that, contravenes a provision of the regulations made under paragraph 35(1) (d) or (3) (a) commits an offence and is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or to both.

39. (1) Every person commits an offence who contravenes

- (a) subsection 17(2) (improper possession of a Canadian maritime document); or
- (b) subsection 28(7) (inform Chair without delay).

(2) Every person who commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both.

40. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

- (a) subsection 16(3) (cheating on an exam);
- (b) section 18 (failure to produce Canadian maritime document);
- (c) subsection 20(7) (failure to return suspended or cancelled Canadian maritime document); and
- (d) a provision of the regulations made under paragraph 35(1)(e) or (3)(b).

(2) Every person who, or vessel that, commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$10,000

121. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

- (a) paragraph 106(1)(a) (ensure vessel meets requirements);
- (b) paragraph 106(1)(b) (develop emergency procedures);
- (c) paragraph 106(1)(c) (ensure training);
- (d) paragraph 106(2)(a) (ensure vessel inspected);
- (e) paragraph 106(2)(b) (ensure terms and conditions met);
- (f) section 107 (obtain certificates);
- (g) subsection 109(1) (ensure safety);
- (h) subsection 109(2) (protect from hazards and notify authorized representative);
- (i) subsection 110(1) (too many persons);
- (j) section 111 (master to comply with direction);
- (k) section 112 (inform of danger);
- (l) paragraph 113(a) (carry out duties and functions safely);
- (m) paragraph 113(b) (report safety hazards);

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- (n) paragraph 113(c) (report change in circumstances);
- (o) paragraph 113(d) (comply with lawful direction given by master);
- (p) section 117 (tampering or vandalism);
- (q) section 118 (jeopardizing safety);
- (r) section 119 (constructing, manufacturing or altering a vessel not in accordance with approved plans); and
- (s) a provision of the regulations made under this Part.

(2) Every person who, or vessel that, commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or to both

122. Every person who contravenes subsection 110(2) (submerged load lines) commits an offence and is liable on summary conviction to a fine of not more than \$500,000 in respect of each centimetre or part of a centimetre that the applicable load line is submerged or to imprisonment for a term of not more than 18 months, or to both.

123. (1) Every person commits an offence who contravenes

- (a) section 114 (comply with direction);
- (b) subsection 115(1) (passenger to comply with direction);
- (c) subsection 115(2) (passenger to comply with direction to leave vessel);
- (d) paragraph 116(a) (boarding or attempting to board without permission); or
- (e) paragraph 116(b) (boarding or attempting to board after safety barriers are in place).

(2) Every person who commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both.

137. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

- (a) subsection 131(1) (assist persons in distress);
- (b) subsection 131(3) (comply with requisition to assist person in distress); or
- (c) section 132 (assist a person found at sea).

(2) Every person who, or vessel that, commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or to both.

138. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

- (a) paragraph 126(1)(a) (entering, leaving or proceeding within a VTS Zone without a clearance);
- (b) paragraph 126(1)(b) (proceeding within a VTS Zone when unable to maintain direct communication);
- (c) a direction given under paragraph 126(3) (b), (c) or (d) (to provide information, to use radio frequencies or to leave, refrain from entering, proceed to or remain in a VTS Zone);
- (d) paragraph 126(5)(a) (take all reasonable measures to communicate);
- (e) paragraph 126(5)(b) (obtain clearance);
- (f) subsection 126(6) (remain at port or proceed to safe port);
- (g) subsection 129(1) (report disturbance of aid to navigation);
- (h) subsection 129(2) (report navigation hazard);
- (i) subsection 130(3) (comply with direction of rescue coordinator); or
- (j) a provision of the regulations made under this Part.

(2) Every person who, or vessel that, commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both.

183. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

- (a) paragraph 167(1)(a) (have an arrangement);
- (b) paragraph 168(1)(a) (have an arrangement);

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- (c) paragraph 168(1)(e) (have procedures, equipment and resources available for immediate use);
- (d) paragraph 168(3)(a) (implement oil pollution prevention plan);
- (e) paragraph 168(3)(b) (implement oil pollution emergency plan);
- (e.1) a direction given under section 168.1 (to update or revise plans);
- (e.2) a direction given under paragraph 168.3(b) (to take measures)
- (f) paragraph 171(b) (have equipment and resources at the site);
- (g) paragraph 171(e) (implement response plan);
- (h) a direction given under paragraph 175.1(2)(a), (c) or (d) (direction resulting from a discharge or possible discharge of a pollutant);
- (i) subsection 177(7) (giving clearance to detained vessel);
- (j) subsection 177(8) (moving detained vessel);
- (k) section 178 (wilfully interfering with service of notice); or
- (l) a direction given under paragraph 180(1)(c) (to take measures or refrain from doing so)

(2) Every person who, or vessel that, commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than eighteen months, or to both.

184. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

- (a) paragraph 167(1)(b) (have a declaration on board);
- (b) paragraph 168(1)(b) (have a declaration on site);
- (c) paragraph 168(1)(c) (have oil pollution prevention plan on site);
- (d) paragraph 168(1)(d) (have oil pollution emergency plan on site);
- (d.1) a direction given under section 168.2 (to provide information);
- (e) paragraph 171(a) (have a response plan);
- (f) paragraph 171(c) (provide or arrange for training);
- (g) paragraph 171(d) (undertake and participate in activities to evaluate response plan);
- (h) paragraph 171(f) (provide information);
- (h.1) a direction given under section 171.1 (to provide documents);
- (i) a direction given under paragraph 175.1(1)(a) (to provide information officer considers appropriate);
- (j) a direction given under paragraph 175.1(1)(b) (to proceed by a route and not in excess of a speed);
- (k) a direction given under paragraph 175.1(1)(c) (to provide information relating to pollution plan);
- (l) a direction given under paragraph 175.1(1)(d) or (e) (to provide documents);
- (m) a direction given under paragraph 176(1)(b) (to provide reasonable assistance);
- (n) a direction given under paragraph 176(1)(c) or (d) (to provide information or to produce documents for inspection); and
- (o) a provision of the regulations made under this Part.

(2) Every person who, or vessel that, commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both.

246. (1) Every person who, or vessel that, contravenes any of the following commits an offence:

- (a) a direction given under subsection 212(2) (to store something);
- (b) section 213 (departing without clearance); and
- (c) a provision of the regulations made under this Part.

(2) Every person who, or vessel that, commits an offence under subsection (1) is liable on summary conviction to a fine of not more than \$100,000 or to imprisonment for a term of not more than one year, or to both.

269. (1) No person shall, during a prescribed period,

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- (a) discharge from a Canadian vessel a prescribed article in any prescribed territory or within the territorial waters adjacent to the territory;
- (b) tranship on the high seas such an article from a Canadian vessel to any vessel bound for such a territory;
- (c) take on board or carry on a Canadian vessel such an article consigned to or destined for a place in such a territory; or
- (d) take on board or carry on any other vessel in Canadian waters such an article consigned to or destined for a place in such a territory

(2) Any person, or member of a class of persons, designated by the Minister of Transport or the Minister of National Defence for the purposes of this section, who has reason to suspect that a vessel is contravening or has contravened subsection (1) may

- (a) direct the master to stop the vessel or proceed to the place that the person may select, and to moor, anchor or remain there for any reasonable period that the person may specify;
- (b) board the vessel;
- (c) direct the master to produce any documents relating to any cargo that is being carried or has been carried on the vessel;
- (d) search the vessel, examine the cargo and direct the master or a member of the crew to open any package or parcel that the person suspects contains articles prescribed for the purposes of subsection (1); and
- (e) make any other examination or inquiry that the person considers necessary to determine whether subsection (1) is being or has been contravened.

(3) If the person has reasonable grounds to believe that subsection (1) is being or has been contravened, the person may take the vessel to the nearest or most convenient port in order that the alleged contravention may be adjudicated by a court of competent jurisdiction

(4) The Governor in Council may, on the recommendation of the Minister of Transport, make regulations

- (a) prescribing any territory in which there is a state of war or armed conflict;
- (b) prescribing anything else that may be prescribed under this section;
- (c) exempting, in the case of any territory prescribed under paragraph (a), an article or class of articles from the application of this section; and
- (d) for carrying out the purposes and provisions of this section.

(5) Every person who contravenes subsection (1) or a direction made under paragraph (2) (a) or (c) commits an offence and is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or to both.

274. (1) Regulations made under the Canada Shipping Act, chapter S-9 of the Revised Statutes of Canada, 1985, other than under any of the provisions listed in section 332 of this Act, remain in force and are deemed to have been made under this Act, in so far as they are not inconsistent with this Act, until they are repealed.

(6) Every person who, or vessel that, contravenes a regulation that is in force under subsection (1) commits an offence and is liable on summary conviction to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or to both.

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Aeronautics Act, RSC 1985, c A-2

7.3 (1) No person shall

- (a) knowingly make any false representation for the purpose of obtaining a Canadian aviation document or any privilege accorded thereby;
- (b) wilfully destroy any document required under this Part to be kept;
- (c) make or cause to be made any false entry in a record required under this Part to be kept with intent to mislead or wilfully omit to make any entry in any such record;
- (d) wilfully obstruct any person who is performing duties under this Part;
- (e) except as authorized under this Part, wilfully operate or otherwise deal with an aircraft that has been detained under this Part;
- (f) wilfully do any act or thing in respect of which a Canadian aviation document is required except under and in accordance with the required document; or
- (g) wilfully do any act or thing in respect of which a Canadian aviation document is required where
 - (i) the document that has been issued in respect of that act or thing is suspended, or
 - (ii) an order referred to in subsection 7.5(1) prohibits the person from doing that act or thing.

(2) Every person who contravenes subsection (1) is guilty of

- (b) an offence punishable on summary conviction.

7.41 (1) No person shall engage in any behaviour that endangers the safety or security of an aircraft in flight or of persons on board an aircraft in flight by intentionally

- (a) interfering with the performance of the duties of any crew member;
- (b) lessening the ability of any crew member to perform that crew member's duties; or
- (c) interfering with any person who is following the instructions of a crew member.

(2) Every person who commits an offence under subsection (1) is liable

- (b) on summary conviction, to a fine of not more than \$25,000 or to imprisonment for a term of not more than eighteen months, or to both.

International Bridges and Tunnels Act, SC 2007, c 1

10. (1) Every person who contravenes section 6 or subsection 8(3) or fails to comply with an order of the Minister under paragraph 9(1)(a) or (b) is guilty of an offence and is liable

- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

11. (1) If a person is convicted on indictment of an offence referred to in subsection 10(1), the court may, in addition to any other punishment that it may impose, order that the international bridge or tunnel, or anything used in its construction or alteration, (in this section referred to as the "property") be forfeited and, on the making of the order, the property is forfeited to Her Majesty in right of Canada.

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26. (1) The Minister may, in accordance with any terms and conditions that the Minister considers appropriate, order a person

- (a) to sell, assign, transfer or otherwise dispose of an international bridge or tunnel if the person purchased or otherwise acquired it without the approval of the Governor in Council;
- (b) to cease operating an international bridge or tunnel if the person is operating it without the approval of the Governor in Council; and
- (c) to relinquish control of an entity that owns or operates an international bridge or tunnel if the person acquired control of the entity without the approval of the Governor in Council.

(2) The Minister may, if an order is made under subsection (1), appoint a person to manage and operate the international bridge or tunnel on an interim basis and in accordance with any terms and conditions that the Minister may specify.

27. (1) Every person who contravenes section 23 or subsection 25(3) or fails to comply with an order of the Minister under section 26 is guilty of an offence and is liable

- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

Motor Vehicle Safety Act, SC 1993, c 16

Offence and punishment

17. (1) Every corporation or company that contravenes this Act, the regulations or an order

- (a) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$200,000; or

Offence and punishment

(2) Every individual who contravenes this Act, the regulations or an order

- (a) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$4,000 or to imprisonment for a term of not more than six months, or to both; or

Railway Safety Act, RSC 1985, c 32 (4th Supp)

41. (1) Every person who contravenes a provision of this Act is guilty of an offence and liable

- (b) on summary conviction,
 - (i) in the case of a corporation, to a fine not exceeding five hundred thousand dollars, and
 - (ii) in the case of an individual, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Contravention of regulations, orders, etc.

(2) A person is guilty of an offence if the person contravenes

- (a) a regulation made under subsection 7(1) or section 7.1, 18, 24, 37, 47 or 47.1;

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- (b) an order made by the Minister under subsection 7(2) or 19(1), section 32 or 32.01 or contained in a notice sent by a railway safety inspector under section 31
- (b.1) an engineering standard;
- (c) a requirement made by the Agency under subsection 16(3) or 26(3);
- (d) a rule in force under section 19 or 20;
- (e) an emergency directive made by the Minister under section 33;
- (f) a requirement under subsection 39.1(2) to carry out a security measure;
- (g) a railway operating certificate issued under section 17.4; or
- (h) an order made under section 36.

Punishment

- (2.1) A person who is guilty of an offence under subsection (2) is liable on summary conviction
- (a) in the case of a corporation, to a fine of not more than one million dollars; and
 - (b) in the case of an individual, to a fine of not more than fifty thousand dollars or to imprisonment for a term of not more than six months, or to both.

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ANNEX B

Indictable Offences

Transportation of Dangerous Goods Act, 1992, SC 1992, c 34

- 33.** (1) Every person is guilty of an offence who contravenes a provision of
- (a) this Act;
 - (b) a direction issued under paragraph 7.1(a), subsection 9(2) or (3), section 17, paragraph 19(1)(a) or (b) or subsection 32(1);
 - (c) the regulations;
 - (d) a security measure; or
 - (e) an interim order.
- (2) Every person who commits an offence under subsection (1)
- (a) is liable on indictment to imprisonment for a term not exceeding two years; or
 - (b) is liable on summary conviction to a fine not exceeding \$50,000 for a first offence, and not exceeding \$100,000 for each subsequent offence.

Marine Transportation Security Act, SC 1994, c 40

- 9.** Every operator who does not carry out security measures that the operator is required to carry out, and every person who wilfully obstructs a person who is carrying out security measures, is guilty of an offence and liable
- (a) on conviction on indictment
 - (i) in the case of an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both, or
 - (ii) in the case of a corporation, to a fine not exceeding \$200,000; or
 - (b) on summary conviction
 - (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
 - (ii) in the case of a corporation, to a fine not exceeding \$100,000.
- 11.** Every operator who does not carry out security rules and conditions approved by the Minister in relation to the operator, and every person who wilfully obstructs a person who is carrying out security rules, is guilty of an offence and liable
- (a) on conviction on indictment
 - (i) in the case of an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both, or
 - (ii) in the case of a corporation, to a fine not exceeding \$200,000; or
 - (b) on summary conviction
 - (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
 - (ii) in the case of a corporation, to a fine not exceeding \$100,000.
- 17.** An operator of a vessel that contravenes a direction is guilty of an offence and liable
- (a) on conviction on indictment

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- (i) in the case of an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both, or
- (ii) in the case of a corporation, to a fine not exceeding \$200,000; or
- (b) on summary conviction
 - (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
 - (ii) in the case of a corporation, to a fine not exceeding \$100,000.

20. (1) A screening officer may require a person or any goods to undergo authorized screening before the person or goods come on board a vessel or enter a restricted area and, where so required,

- (a) the person shall not board the vessel or enter the restricted area unless the person has undergone the authorized screening; and
- (b) no person shall bring the goods on board the vessel or into the restricted area unless the goods have undergone the authorized screening.

Screening after boarding or in restricted areas

(2) A screening officer may require a person on board a vessel or in a restricted area to undergo authorized screening and, if the person refuses,

- (a) the officer may order the person to leave the vessel or restricted area and to remove from it any goods that the person took or had placed there; and
- (b) the person shall leave the vessel or restricted area and remove or permit the removal of the goods immediately or, in the case of a vessel that is not docked, at the first reasonable opportunity.

Circumventing authorized screening

(5) Every person who contravenes subsection (2) or who wilfully circumvents authorized screening in any manner is guilty of an offence and liable

- (a) on conviction on indictment, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both; or
- (b) on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both.

Assistance to inspectors

25. (1) The operator of any vessel or marine facility boarded or entered by a security inspector who is carrying out functions under this Act, and every person found there, shall give the inspector all reasonable assistance in that person's power to enable the inspector to carry out those functions.

Obstruction of inspectors

(2) When a security inspector is carrying out functions under this Act, no person shall fail to comply with any reasonable request of the inspector or otherwise wilfully obstruct the inspector.

Other prohibitions

(3) No person shall

- (a) knowingly make any false or misleading statement or knowingly provide false or misleading information to a security inspector or other person carrying out functions under this Act;

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- (b) wilfully destroy any record or document required to be kept under this Act;
- (c) make a false entry in a record required to be kept under this Act with intent to mislead, or wilfully omit to make any entry in such a record;
- (d) remove, alter or interfere in any way with anything seized by a security inspector, except with the inspector's permission; or
- (e) wilfully operate a vessel that has been detained under this Act, unless authorized to do so under this Act.

Offence

- (4) Every person who contravenes this section is guilty of an offence and liable
- (a) on conviction on indictment
 - (i) in the case of an individual, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding one year or to both, or
 - (ii) in the case of a corporation, to a fine not exceeding \$200,000; or
 - (b) on summary conviction
 - (i) in the case of an individual, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both, or
 - (ii) in the case of a corporation, to a fine not exceeding \$100,000.

Canada Shipping Act, 2001, SC 2001, c 26

- 253.** (1) Every person is guilty of an offence and liable on conviction on indictment to a fine or to imprisonment for a term of not more than five years, or to both, who, in committing an offence under this Act,
- (a) intentionally or recklessly causes a disaster that results in the loss of life or serious damage to the environment; or
 - (b) shows wanton or reckless disregard for the lives or safety of other persons and thereby causes a risk of death or bodily harm to another person.

Aeronautics Act, RSC 1985, c A-2

7.3 (1) No person shall

- (a) knowingly make any false representation for the purpose of obtaining a Canadian aviation document or any privilege accorded thereby;
- (b) wilfully destroy any document required under this Part to be kept;
- (c) make or cause to be made any false entry in a record required under this Part to be kept with intent to mislead or wilfully omit to make any entry in any such record;
- (d) wilfully obstruct any person who is performing duties under this Part;
- (e) except as authorized under this Part, wilfully operate or otherwise deal with an aircraft that has been detained under this Part;
- (f) wilfully do any act or thing in respect of which a Canadian aviation document is required except under and in accordance with the required document; or
- (g) wilfully do any act or thing in respect of which a Canadian aviation document is required where
 - (i) the document that has been issued in respect of that act or thing is suspended, or
 - (ii) an order referred to in subsection 7.5(1) prohibits the person from doing that act or thing.

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(2) Every person who contravenes subsection (1) is guilty of

- (a) an indictable offence; or
- (b) an offence punishable on summary conviction.

7.41 (1) No person shall engage in any behaviour that endangers the safety or security of an aircraft in flight or of persons on board an aircraft in flight by intentionally

- (a) interfering with the performance of the duties of any crew member;
- (b) lessening the ability of any crew member to perform that crew member's duties; or
- (c) interfering with any person who is following the instructions of a crew member.

(2) Every person who commits an offence under subsection (1) is liable

- (a) on conviction on indictment, to a fine of not more than \$100,000 or to imprisonment for a term of not more than five years, or to both; and
- (b) on summary conviction, to a fine of not more than \$25,000 or to imprisonment for a term of not more than eighteen months, or to both.

International Bridges and Tunnels Act, SC 2007, c 1

10. (1) Every person who contravenes section 6 or subsection 8(3) or fails to comply with an order of the Minister under paragraph 9(1)(a) or (b) is guilty of an offence and is liable

- (a) on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding two years, or to both; or
- (b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

11. (1) If a person is convicted on indictment of an offence referred to in subsection 10(1), the court may, in addition to any other punishment that it may impose, order that the international bridge or tunnel, or anything used in its construction or alteration, (in this section referred to as the "property") be forfeited and, on the making of the order, the property is forfeited to Her Majesty in right of Canada.

26. (1) The Minister may, in accordance with any terms and conditions that the Minister considers appropriate, order a person

- (a) to sell, assign, transfer or otherwise dispose of an international bridge or tunnel if the person purchased or otherwise acquired it without the approval of the Governor in Council;
- (b) to cease operating an international bridge or tunnel if the person is operating it without the approval of the Governor in Council; and
- (c) to relinquish control of an entity that owns or operates an international bridge or tunnel if the person acquired control of the entity without the approval of the Governor in Council.

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(2) The Minister may, if an order is made under subsection (1), appoint a person to manage and operate the international bridge or tunnel on an interim basis and in accordance with any terms and conditions that the Minister may specify.

27. (1) Every person who contravenes section 23 or subsection 25(3) or fails to comply with an order of the Minister under section 26 is guilty of an offence and is liable

(a) on conviction on indictment, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding two years, or to both; or

(b) on summary conviction, to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding six months, or to both.

Motor Vehicle Safety Act, SC 1993, c 16

Offence and punishment

17. (1) Every corporation or company that contravenes this Act, the regulations or an order

(a) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$200,000; or

(b) is guilty of an indictable offence and is liable to a fine of not more than \$2 million.

Offence and punishment

(2) Every individual who contravenes this Act, the regulations or an order

(a) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$4,000 or to imprisonment for a term of not more than six months, or to both; or

(b) is guilty of an indictable offence and is liable to a fine of not more than \$20,000 or to imprisonment for a term of not more than two years, or to both.

Railway Safety Act, RSC 1985, c 32 (4th Supp)

41. (1) Every person who contravenes a provision of this Act is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of a corporation, to a fine not exceeding one million dollars, and

(ii) in the case of an individual, to a fine not exceeding fifty thousand dollars or to imprisonment for a term not exceeding one year, or to both; or

(b) on summary conviction,

(i) in the case of a corporation, to a fine not exceeding five hundred thousand dollars, and

(ii) in the case of an individual, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months, or to both.

Contravention of regulations, orders, etc.

(2) A person is guilty of an offence if the person contravenes

(a) a regulation made under subsection 7(1) or section 7.1, 18, 24, 37, 47 or 47.1;

(b) an order made by the Minister under subsection 7(2) or 19(1), section 32 or 32.01 or contained in a notice sent by a railway safety inspector under section 31;

(b.1) an engineering standard;

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- (c) a requirement made by the Agency under subsection 16(3) or 26(3);
- (d) a rule in force under section 19 or 20;
- (e) an emergency directive made by the Minister under section 33;
- (f) a requirement under subsection 39.1(2) to carry out a security measure;
- (g) a railway operating certificate issued under section 17.4; or
- (h) an order made under section 36.

Punishment

- (2.1) A person who is guilty of an offence under subsection (2) is liable on summary conviction
- (a) in the case of a corporation, to a fine of not more than one million dollars; and
 - (b) in the case of an individual, to a fine of not more than fifty thousand dollars or to imprisonment for a term of not more than six months, or to both.

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2.7 Investigative Tools and Techniques – Introduction

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TITLE

Investigative Tools and Techniques – Introduction

SUBJECT

Transport Canada enforcement officers may be called upon to respond to a great variety of events, some of which may lead to administrative sanction or a prosecution. On some occasions it may lead to the suspension of an operating certificate. The conduct of investigations which may be subject to significant scrutiny by either the party under investigation or by the ultimate decision maker should be above reproach, and professional. Investigations should be conducted in accordance with the best practices in evidence gathering and collection, statement taking and case preparation.

PURPOSE AND SCOPE

This document introduces the sections of the Desk Book that provide direction to Transport Canada officers on these important tools and techniques. Following the investigative approaches set out in these sections will minimize potential challenges to the integrity of the investigation

Where there is any question on the exercise of an authority or the use of a particular tool or technique, enforcement personnel are reminded of the following resources available at any point before, during, or after the investigation:

Centre of Enforcement Expertise – List of contacts contained in Section 1.7 of the Desk Book.

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TITLE

Standard on an Information to Obtain a Search Warrant

SUBJECT

Transport Canada (TC) enforcement practices sometimes require officers to seek warrants or orders to conduct searches, or require the production of documents from Third Parties. On occasion, officers during the course of inspections may equally need an “entry warrant” to gain access to dwelling houses. For “entry warrants” please consult **Chapter 2.14 Standard on Entry Warrant Preparation and Execution**. Such warrants and orders must be sought from judicial authorities pursuant to the terms of the *Criminal Code*. The issuance of a warrant or an order is contingent upon the presentation of information on oath to a judicial officer sufficient to persuade him or her that there are reasonable grounds. Annexes A, B, and C provide completed examples of these documents.

Those who draft and contribute to Informations to Obtain Search Warrants are reminded that they may be called upon to testify in court proceedings regarding the contents of the Information to Obtain. Their contents will be made public, unless the court rules otherwise through a sealing order.

PURPOSE AND SCOPE

This standard provides the direction for TC officers on how to prepare an Information to Obtain a Search Warrant and should be read in conjunction with **Chapter 2.7.5 Standard on Executing a Search Warrant**.

POLICY STATEMENT

It is the policy of TC that its officials, when preparing an Information to Obtain a Search Warrant or other enforcement instrument, will do so in accordance with the legislative authorities and in accordance with the direction contained in this document.

POLICY REQUIREMENTS/GUIDELINES

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2.7.1 Standard on Information to Obtain a Search Warrant
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This standard sets out the requirements for the preparation of an Information to Obtain a Search Warrant, pursuant to the *Criminal Code*. The Centre of Enforcement Expertise (the “Centre”) must be consulted for advice and support in preparing the necessary documents (i.e. the Information to Obtain, Search Warrant). Those documents must be prepared in accordance with this standard by appropriately trained officers and reviewed by the Centre and Legal Services.

In addition, the drafting of warrants is often influenced by local practices in place in each jurisdiction and sometimes down to each judicial district. Always ensure the process followed is that acceptable in your jurisdiction, which may, in some cases, differ from the present policy.

STEPS TO OBTAIN A SEARCH WARRANT

The basic steps involved in obtaining a Search Warrant under section 487 of the *Criminal Code* are found below: An informant does not have to be a Peace Officer to apply for a warrant under section 487 which permits TC officers who are “Public Officers” as defined in the *Criminal Code* to apply for a search warrant. While the *Criminal Code* does define “Public Officers”, it should be noted that by virtue of the Common Law, all officers who are mandated to discharge a public duty are, for the purposes of applying for judicial authorizations, such as search warrants, are “Public Officers”. However, certain judicial authorizations may only be obtained by peace officers, (e.g. a general warrant), in which case TC could, through the Centre, apply for direct assistance from a police force in the local jurisdiction. The basic steps to obtain a search warrant are:

1. Identify the offence, the evidence and the place to be searched.
2. Consider less intrusive means to obtain the evidence.
3. Consult with Supervisor and the Centre for Enforcement Expertise.
4. Draft the Information and warrant and have it reviewed by Legal Counsel.

The first three steps deal with preliminary considerations to assist in determining whether there is a sound basis for obtaining a Search Warrant and a list of topics to discuss with the supervisor and the Centre.

Step 4 includes a sample Information and warrant, along with advice on drafting these documents. These examples were prepared to highlight issues that may arise in complex investigations and are longer than what might be needed for most searches. Shorter, simpler documents are likely sufficient for most searches.

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A. Prior to Drafting an Information to Obtain

Step One: Identify the Offence, the Evidence and the Place to be Searched

Start with a description of the specific offence or offences being investigated and ask the following questions:

- Are there reasonable grounds to believe that an offence a federal statute has been committed? Have the elements of the offence been identified? What are the grounds to believe an offence has been committed?
- What is to be seized? This must be specific -- searches under warrant cannot be used in the hopes that something worthwhile will be found. It does not give permission to conduct a "fishing expedition".
- Are the things to be seized able to afford evidence with respect to the commission of the offence alleged? Why?
- Is the list of things to be seized complete? While direct evidence of the offence will be seized, are there other things that should be seized?
- Is the location of the items to be seized known? How was this determined? There must be reasonable grounds to believe that the items are in a particular location in order to get a Search Warrant to search that location.

Once these questions have been answered, review the responses to ascertain if there is enough information to explain the decision. Is it clear that there is enough material to proceed with obtaining a Search Warrant? An Information to Obtain a Search Warrant requires substantive details. Is more investigative work required?

Step Two: Consider Less Intrusive Means to Obtain the Evidence

Is a Search Warrant the most appropriate means of obtaining the evidence? Warrants are a useful but demanding investigative tool. Perhaps the evidence sought can be obtained in a less intrusive manner, such as asking a Third Party to provide the information who might be lawfully entitled to do so, or indeed asking the party under investigation to produce the item on consent. Often, it may be that evidence may be obtained using the inspection power. Prior to applying for a warrant, officers should engage with the Centre and the LSU to assess the extent of the available inspection power in the given circumstances. Can the evidence be obtained in any other way, without jeopardizing the investigation? This may involve considering whether a less intrusive approach might warn an offender and result in the destruction of evidence.

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This does not mean using inspection powers as a pretext to obtain evidence for a prosecution. This could be viewed as an abuse of the inspection powers. Search Warrants under section 487 of the *Criminal Code* should be reserved for penal investigations possibly leading to prosecutions¹.

Step Three: Consult Supervisor and Centre

Consult with your supervisor and review steps One and Two. Contact the Centre with any further questions and be prepared to answer the following:

Criminal Code or Other Authority? Is this an application for a warrant under section 487(1)(b) of the *Criminal Code* or under some other statutory provision?

Choice of Court Which court should hear the application? Are there local practice considerations or concerns? Find out who is the issuing authority in your jurisdiction (e.g. certain provinces have designated certain justices of the peace (JPs) as issuing authority, “regular” JPs cannot perform this function. Also certain searches such as search of a law office can only be authorized by a superior court judge.)

Confidentiality Do certain elements need to be kept confidential? Should the following be protected:

- the identity of a confidential informant;
- information about an ongoing investigation;
- sensitive investigative techniques;
- information that would prejudice the interests of an innocent person; or
- confidential business information?

It may be possible to protect some or all of this Information, either temporarily or permanently. Ask the Centre for advice.

Obligation to Make Frank Disclosure Is there any information that is required to be disclosed to the Justice in the interest of fairness? This may mean information that is exculpatory, or embarrassing. The rule is full and frank disclosure.

How Many Informations? If it is proposed to search more than one place, should there be separate informations to obtain, or one single overall information supporting all warrants?

¹ Note exception for dwelling house warrants.

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An Information to Obtain either a Search Warrant or a Production Order is an affidavit disclosing the grounds as described above and is sworn by the officer requesting the Search Warrant or Production Order. The *Criminal Code* provides specific forms for each of these two applications.

The entire package to be given to the judicial officer consists of the unsworn Information to Obtain (including any appendices), and a draft of the actual Search Warrant.

B. Drafting an Information to Obtain

Step Four: Drafting the Information and the Warrant

An Information to Obtain a Search Warrant is an affidavit (document) based upon the provisions of the *Criminal Code*. The issuance of a search warrant is a judicial act.²

The Information to Obtain is presented in a private forum (*ex parte*) to a judicial officer by an authorized party seeking the grant of authority to enter a place and seize private property which, without judicial authority, would itself be unlawful. Accordingly, “the legal obligation on anyone seeking an *ex parte* authorization is full and frank disclosure of material facts³.”

The Information to Obtain is intended to inform the judicial officer to permit him or her to exercise the authority to issue the Search Warrant. Accordingly, it must be drafted with that end in mind, respecting always the need to provide full and frank disclosure of the material facts. The judicial officer uses the Information to determine whether or not to issue a warrant. Once signed, the warrant becomes the legal authorization to carry out the search and seizure.

What documents are needed? There are two documents to prepare in the process of obtaining a Search Warrant -- the Information to Obtain the warrant and the warrant itself. Take care to ensure that each contains current, accurate and complete information and ensure the information is complete when presented to the justice. It is an unacceptable practice to omit details in anticipation of adding them orally during the presentation to the justice. Model the Information on Form 1 and the Warrant on Form 5 of the *Criminal Code*. [See Annexes A, and B]. Ensure the alleged offences, place to be searched and things to be seized are identically described in the Information and warrant.

What are the formalities regarding language, format and number of copies? There are several points to consider before drafting either document.

² A.G. (Nova Scotia) v. MacIntyre, [1982] 1 SCR 175, 1982 CanLII 14 (SCC) MacIntyre at p. 180

³ R. v. Araujo, [2000] 2 SCR 992, 2000 SCC 65 (CanLII) Lebel, J. at paragraph 46

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- Identify any local requirements regarding numbers of copies or formats particular to the jurisdiction where the application will be presented. Some jurisdictions may impose the obligation on the affiant to use a particular form.
- Use bilingual forms provided by the court or the Centre. If forms are not available, then adapt Form 1 and Form 5 from the *Criminal Code* and include the standard clauses, that would normally be found on a printed form, in both English and French.
- In the Information, complete the remaining parts, which vary from one Information to the next, in either official language.
- Draft the remaining variable parts of the warrant in the official language most likely to be understood by the occupant of the premises to be searched, if possible. Regardless of the language used, include a notice in the other official language that any person affected by the warrant may request a translation of the warrant into the other official language.
- If necessary, obtain translations into the other official language to ensure that:
 - the justice can understand both the Information and the Warrant, and
 - the persons responsible for executing the Warrant can understand it.

How many locations are to be searched?

- Draft a separate warrant for each place or decide whether to prepare one global Information or separate Information for each place to be searched.

1. *How will the documents be approved and proofread?*

Once drafted, all documents should be proofread for content, flow and clarity:

- check them to ensure that they comply with section 487 of the *Criminal Code* and with any other pertinent legislation.
- ask a colleague to read and check the Information and draft warrant for clarity and completeness.
- submit the Information to Obtain and draft warrant for review by the supervisor, the Centre and legal advisor for approval.

The remainder of the material on step 4 addresses the contents of these documents.

C. Drafting – Format – Form 1

This section outlines what belongs in an Information, provides some important guidelines to follow in drafting the document and includes a sample Information. When presented, the draft Information to Obtain must be based on a frank disclosure of material information while protecting confidential sources. The Information should be complete when presented to the judicial official and the informant must swear or affirm that the contents of the Information are true.

What Belongs in an Information? When drafting the Information, all the information necessary to allow the justice to decide whether to issue a warrant must be included and it must conform to the legal requirements of Form 1 of the *Criminal Code*. Use Form 1 of the *Criminal Code* as a model.

Requirements are for the informant:

- To identify him or herself as the informant
- To state his or her belief that the things to be seized
 - will afford evidence with respect to the commission of the offence alleged or will reveal the whereabouts of a person believed to have committed an offence, and
 - are at the premises intended to be searched
- To list the things to be seized, the offence alleged and the premises to be searched
- To explain his or her reasonable grounds for belief that
 - an offence was committed
 - the things to be seized are at the premises to be searched
 - the things to be seized will afford evidence with respect to the commission of the offence or the whereabouts of an offender
- To include other information (e.g. persons to execute warrant, any special conditions, disclosure of material information)
- To include a request for warrant to be issued (Wherefore the informant request . . .)
- To include the jurat (Sworn before me, this ...)

Form 1 of the *Criminal Code of Canada* is a blank form that provides the model for what must be completed. A simple Form 1 may consist of only several pages while a Form 1 for a major investigation or complex file might consist of several hundred pages of background information. The blank form is shown below:

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FORM 1 (Section 487)

INFORMATION TO OBTAIN A SEARCH WARRANT

Canada,

Province of _____,

(*territorial division*).

This is the information of A.B., of _____ in the said (*territorial division*), (*occupation*), hereinafter called the informant, taken before me.

The informant says that (*describe things to be searched for and offence in respect of which search is to be made*), and that he believes on reasonable grounds that the said things, or some part of them, are in the (*dwelling-house*,

etc.) of C.D., of _____, in the said (*territorial division*). (*Here add the grounds of belief, whatever they may be.*)

Wherefore the informant prays that a search warrant may be granted to search the said (*dwelling-house, etc.*) for the said things.

Sworn before me this _____ day of _____, A.D. _____, at _____ . (*Signature of Informant*)

A Justice of the Peace in and for _____

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D. Completing Form 1 – The Basics of an Information to Obtain

There are nine basic sections that must be completed in Form 1. What follows in the table below are the elements of a sample Information to Obtain. Each section starts with what is required for the specific element followed by sample text that could be used to complete that section. The sample uses fictitious facts and laws to illustrate the features of an Information to Obtain. The fact situation is a moderately complex fact situation in order to illustrate the use of an Appendix to supplement the grounds for the issuance of the Search Warrant. Section E below describes the preparation of such an Appendix.

Annexes A and B to this Chapter contain the fully completed Information to Obtain as well as the supporting appendix from Section E, without the commentary in a form that would be available to present to a judicial officer for his or her consideration.

Form 1 Elements – Commentary and Draft Clauses	
1. Identification of Informant	
Provide the name, occupation and office address at the beginning of the Information.	
1. This is the information of John Doe, of the City of Vancouver, in the Province of British Columbia, an inspector designated under the <i>Transportation Safety Act</i> and the <i>Transportation Environment Protection Act</i> , hereinafter called the informant, taken before me, the undersigned Judge in and for the Province of British Columbia.	
2. Statement of Belief	
Begin with a summary statement similar to the one provided in paragraph 2 of the sample. Then list the alleged offence, the things to be seized and the premises to be searched as demonstrated in paragraphs 2, 3 and 4. Be specific and accurate in descriptions.	
2. The informant has reasonable grounds to believe and does believe that the things described in paragraph 3 do exist, are at the premises described in paragraph 4 and will afford evidence with respect to the commission of the following offences	
3. Describing the Alleged Offences	
<ul style="list-style-type: none">List all the offences for which there are reasonable grounds to <u>believe</u>.Refer to the relevant legislation and section number.Describe the "who, what, when and where" for each offence alleged.	
3. That Transportor Ltd. and Alice Freeman permitted the operation of a transportation vehicle in a manner that caused it to deposit a hazardous substance, kinetic acid, in a place and under conditions where the hazardous substance may enter water frequented by fish, contrary to section 42 of the <i>Transportation Environment Protection Act</i> , on an unknown number of occasions, between June 1, 2014 and October 31, 2014, at or near 2001 Russell Street, in Vancouver, British Columbia.	

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4. *Describing Things to be Seized*

Be specific so that the officers participating in the search will be able to identify the things to be seized. Describe all the things to be seized.

Word description so that it includes evidence that would tend to clear, as well as evidence that would tend to implicate suspects.

When requesting authorization to seize a large item that can be taken apart, ask for authorization to seize the *components* of the item as well, in case it has been taken apart.

If it is not possible to list specific things, describe classes of things

- limiting it to those things that will afford evidence with respect to the commission of the offence alleged.
- limiting the class by date, if possible.
- adding as many qualifiers as possible (e.g. country of origin, size, customer, manufacturer).

Do not use broad, vague terms such as "and other related material."

4. *The things to be searched for are:*

- records relating to the acquisition, storage, handling and use of Restora and other products containing kinetic acid by Transportor Ltd. between June 1, 2014 and October 31, 2014
- soil and water samples from the lands occupied by Transportor Ltd. described in paragraph 4
- samples of the contents of the two outdoor storage tanks in the northeast corner of the lands occupied by Transportor Ltd.
- records containing the handwriting of identified directors, officers, agents and employees of Transportor Ltd.
- organization charts, telephone lists, memoranda, notes, correspondence, job descriptions, performance evaluations and other records relating to the structure and organization of Transportor Ltd. or to the names, authority and responsibilities of the directors, officers, agents and employees of Transportor Ltd.

that will afford evidence with respect to the commission of the offences described in paragraph 2

5. *Describing the Premises to be Searched*

Provide a physical or geographic description of the premises to be searched and the name of the person who owns or occupies the premises.

Refer to municipal street address for an urban location; and lot, plan, concession for a rural location and province.

Include photograph/diagram if difficult to describe the premises. If you cannot pinpoint the exact location of the things to be seized, list each of the buildings occupied by the suspect at the premises, or refer to "all the buildings occupied by X at ..." as demonstrated in paragraph 4 of the sample. To search an office building, refer to the street address and the

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occupant. Do not refer to a specific suite or floor unless sure that the occupant is limited to that suite or floor.

Clearly state, in the Information and the Warrant if location to be searched is a dwelling-house and, if premises are commercial indicate same.

If the location to be searched is occupied by news media, a legislative or government body, a religious institution, a law firm, a diplomat or other internationally protected person or a financial institution, state this clearly in the Information and the warrant.

5. *The description of the premises to be searched is:*

all the buildings and surrounding lands occupied by Transportor Ltd. at 2001 Russell Street in Vancouver, British Columbia, including all storage tanks and other structures located on those lands

6. **Reasonable Grounds for Belief**

This section is a vital part of the Information. Here, the Information must satisfy the justice that there are reasonable grounds to believe that the things to be seized 1) will afford evidence with respect to the commission of the offence alleged, and 2) are located in the premises to be searched.

Outline the information that provides the grounds to believe and state how it was obtained (e.g. named or confidential source, physical or electronic surveillance.)

Often the grounds for belief are fully described in the main body of the Information. The example below makes reference to Appendix A which will contain the full grounds. However, the same information could be reproduced in this section. What is provided in this example is a brief summary of the grounds in the main body of the Information.

6. The informant has reasonable grounds for belief, as set out in Appendix A, attached. In brief, the informant has reasonable grounds to believe that Transportor Ltd. and its president and principal shareholder, Alice Freeman, permitted the deposit of a deleterious substance, kinetic acid, in a place where it might enter water frequented by fish, on an unknown number of occasions between June 1, 2014 and October 31, 2014. Transportor and Ms. Freeman have been storing a product containing kinetic acid, which is extremely deleterious to fish, in an outdoor storage tank which has developed leaks on several occasions. The storage tank is situated near a ditch that empties into the Fraser River after moderate or heavy rainfall.

7. **Other Information Required**

Present other important information that should be provided to the justice in this section. Be sure to:

- name or describe the person or persons to execute the warrant. Directing the warrant to a class of peace officers, or to more than one person by name, ensures that the

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warrant can be executed even if the individual originally expected to execute it is unavailable. Note: Public Officers must be named in the Information to Obtain and the actual Warrant.

- state the time and date for execution of the warrant. It is usually possible to execute a warrant within a day or two of issuance. The usual hours for execution, set by the *Criminal Code*, are between 6 a.m. and 9 p.m. Explain a departure from either of these norms as demonstrated in paragraphs 7 and 8. The Code itself does not require that a date of execution be stated in the warrant and indeed circumstances may not allow you to know the date on which it may be executed. It must however be executed within a reasonable time following issuance.
- request any special conditions that should be included in the warrant on account of the type of things to be seized or premises to be searched.
- make frank disclosure of any required information not found elsewhere in the document.

7. The informant requests that this warrant be directed to John Doe, Liza Patrick and John Lipofski, all inspectors designated under the *Transportation Safety Act* and the *Transportation Environment Protection Act* and to a peace officer with the Vancouver City Police.

8. The informant requests that this warrant be valid from November 1, 2014 to November 30, 2014. Although it is not expected that it will take a full month to execute the warrant, this extended period of validity will allow those executing the warrant to seize soil and water samples in dry weather conditions during and after moderate to heavy rainfall.

8. **Prayer for Warrant**

At the end of the Information, include a sentence requesting that a warrant be granted, as in paragraph 8.

8. *Wherefore the informant prays that a search warrant may be granted to search the premises described in paragraph 4 for the things described in paragraph 3.*

9. **Jurat**

Leave space at the end of the Information so that the informant and the justice can sign their names to indicate that they have sworn or affirmed the contents of the Information. Signatures, location and date will also have to be filled in. Do not put the jurat by itself on a separate page.

(Signature of informant)

Sworn before me this 31st day of October, A.D. 2014,

at Vancouver, British Columbia

(Signature of Justice)

A Justice of the Peace in and for the Province of British Columbia

E. Preparing to Draft the Reasonable Grounds Appendix

REASONABLE GROUNDS APPENDIX – PRELIMINARY CONSIDERATIONS

Organizing the Information to Obtain. A well-organized Information to Obtain assists the judicial authority in reviewing the material submitted to conclude that “reasonable grounds” do exist, sufficient to justify the issuance⁴. This appendix allows the judicial officer to review the entire basis for the grounds. It is the true substance of the Information to Obtain and provides the results of investigations to date. It should permit the judicial officer to easily come to the conclusion that the grounds to believe are reasonable and support the proposition that a warrant or order should be issued. The degree of organization of the material is dependent upon the complexity of the request and the breadth of the application. At the outset, consider the following best practices:

1. ***Providing an Introduction*** containing an overview of the investigation and what is being sought.
2. ***Organization of the Information to Obtain*** number the pages and paragraphs, use titles, subtitles and sub-subtitles, provide a table of contents
3. ***Identify the targets of the Information to Obtain*** including people, places and things;
4. ***Clearly Communicate*** by being concise and clear in communications; use simple sentences and paragraphs keeping to one idea or topic per paragraph; limit each idea or paragraph to 25 words or less; consider use of photographs, charts or tables where this facilitates communication;
5. ***Ensure information is current*** and that nothing could be construed as having misled the justice.

Respect the rule against narrative. While it may be attractive to recite what it seems may have happened in a chronological order, any factual assertion by the applicant within the affidavit must be sourced to some investigative resource. It is not enough for the informant to simply state conclusions, opinions and facts without providing the court with the source or origin for such conclusions, opinions or facts. The credibility and reliability of the assertions are inextricably linked to the investigative resources themselves.

The Importance of Sources: Sources include personal observations, other legally seized documents or evidence, analysis of the evidence, Third Party sources, other investigative

⁴ R. v. Chhan, 1996 CanLII 7025 (SK QB), Laing, J.

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officers, witnesses, confidential sources and others. Each one of these sources may contribute to the Information to Obtain, where the following three questions can be answered:

1. What is known
2. How is it known
3. Why does it matter

The Judge may refuse to grant the order because key information is un-sourced, or Defense counsel may look for un-sourced statements and cross-examine on those points to expose a lack of detail, arguing the order should never have been granted because critical details were omitted.

Examples of un-sourced conclusion, opinion, or facts

“Inspections have shown”

“A Transport Canada investigation” determined ...

“Many observers have said”

Protection of Confidential Sources: Informations normally become available to persons whose premises have been searched and may at some point be obtained by members of the public, including journalists. If the informant intends to rely on information provided by a source who has a reasonable expectation of confidentiality, including one who has been promised confidentiality, take steps to protect the source. A number of techniques are available. Seek advice from legal advisor or Supervisor.

Frank Disclosure of Material Information With the exception of the identity of confidential sources, the informant must make frank disclosure of all the material facts in the Information. The informant is not obliged to include every detail about the investigation, however, any information that could affect the justice's decision on whether or not to issue a warrant must be disclosed. For example, make full disclosure if:

- the informant is aware of any possible justification for the conduct alleged.
- the suspect or anyone whose premises are to be searched has cooperated in the investigation.
- there have been any previous applications for Search Warrants.
- there have been any previous judicial or administrative proceedings relating to the investigation.
- there is any reason to question the reliability of any information relied on in preparing the Information.
- any agent of the state has done anything in the course of the investigation that might be viewed as subterfuge or as a violation of any person's legal rights.

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If there is any doubt as to whether or not a matter should be disclosed in the Information, consult legal advisor or supervisor.

Reliance on Information from Other Sources The informant may use information provided by others as grounds for obtaining a Search Warrant, if adequate steps to verify it are taken and the informant is satisfied that it is true. There are many factors to consider when determining whether information provided by another person is reliable, including the following:

- Is the person who provided the information a trusted colleague bound by a duty to act responsibly and fairly?
- Does the person have a good reputation for honesty and accuracy? Does the person have a criminal record?
- Does the person have any personal interest in the outcome of the investigation or any other motivation to mislead?
- Did the person have a good opportunity to acquire accurate information about the matters in question?
- Did the person provide a detailed, internally consistent account of the events in question?
- Has the person given accurate information in the past? How long ago? On how many occasions?
- Has anyone been able to obtain independent confirmation of any aspects of the information provided by the person? (It is not necessary that the details confirmed be incriminating details.)
- Is the person willing to make a signed or sworn statement confirming the information provided?
- Is the person willing to be publicly identified as the source of the information? If not, does the person have a good reason for wishing to remain anonymous?

When relying on information provided by others to obtain a Search Warrant, the informant must state in the Information to Obtain the Warrant, the source of the information and the basis for the source's information, to the degree that is appropriate, given concerns relating to confidential informants.

Fair Disclosure of Information Provided by Others When referring to information provided by others, be scrupulously fair and accurate in summarizing or paraphrasing it.

If a source has provided information that would tend to clear a suspect as well as information that would implicate the suspect, it is necessary to disclose all of this Information. If there are any doubts about what should be disclosed, consult legal advisor or supervisor.

Common preventable errors include:

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- a. Too broad: Categories of documents and records asked for are too large and broad, this can be remedied by specifying (as is required) what is being searched for or what orders are to be produced.
- b. Too vague – Imprecise description of items to be seized giving the officer executing the warrant too much discretion
- c. Use of basket clauses – Listing an open-ended category of items to be seized “such other items as the officer may consider relevant). This is remedied by addressing what is to be seized as specifically as possible in the Information to Obtain.
- d. Accuracy of Names - Ensure that all names appearing in the Information are accurate, complete and correctly spelled. It is particularly important to verify the names of individuals, corporations and other entities and place names that identify the premises to be searched. If entities such as corporations or partnerships are involved, check with the appropriate corporation’s branch or other registry to obtain the proper name.

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DRAFTING THE REASONABLE GROUNDS APPENDIX

This usually occurs where it is not possible to include all the relevant information in the body of Form 1, or where the investigation is complex, requiring significant explanation for the issuance of a Search Warrant or in the interests of making a full and frank disclosure of the grounds. Investigative agencies have adopted the practice of providing an “Appendix” of additional information to supplement Form 1. An Appendix has the same legal character as the elements of Form 1 and is part of the actual Form, even though it is referred to as an appendix. The Appendix permits a more complete disclosure of the investigation, background and grounds to believe that the elements of the Information to Obtain have been addressed. The better practice is to organize the materials in such a way that the judicial officer can easily conclude that grounds for issuance have been fully set out.

The Appendix is an elaboration of the elements that make up the “Reasonable Grounds” necessary for the Search Warrant to be issued.

The Appendix, to an Information to Obtain should be organized to include the following elements depending upon the complexity of the investigation and the requirements of the search:

- a. Introduction
- b. Investigative Sources
- c. Main Persons Involved – The Parties
- d. Grounds to Believe that an offence has been committed
- e. Grounds to Believe that the items to be seized are at the identified premises
- f. Grounds to Believe that the items to be seized will afford evidence of the offence
- g. Conclusion

There are seven basic sections that should be completed in the Reasonable Grounds Appendix. What follows in the table below are the elements of a sample appendix. Each section starts with what is required for the specific element and found below is sample text that could be used to complete that section. The sample uses fictitious facts and laws to illustrate the features of a Reasonable Grounds Appendix.

Annexes A and B to this Chapter contain the fully completed Information to Obtain as well as the supporting appendix without the commentary in a form that would be available to present to a judicial officer for his or her consideration.

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a) **Introduction:** In this section, the informant refers to his or her request pursuant to the Information to Obtain a Search Warrant to provide the context for the reasonable grounds which will be detailed in the appendix.

The informant also establishes his or her responsibility for the Information as well as his or her reliability both by citing his or her experience, but also by identifying his or her legal authority under the relevant statutory or other authority.

Introduction

1. This Appendix sets out my grounds for belief for the issuance of the search warrant requested in my information. It forms part of the Information to obtain a search warrant under section 487 of the *Criminal Code* of Canada to search:

all the buildings and surrounding lands occupied by Transportor Ltd. at 2001 Russell Street in Vancouver, British Columbia, including all storage tanks and other structures located on those lands

2. I, John Doe am an inspector assigned to the Vancouver Regional Office of Transport Canada. I have a masters degree in biochemistry from the University of Alberta. I have taken week-long courses in search and seizure and the rules of evidence sponsored by Transport Canada. I have also taken Transport Canada's fifty-hour courses in marine pollution and industrial chemicals. I have been employed as an inspector for eight years and have participated in over 100 investigations into offences under the *Transportation Safety Act* and the *Transportation Environment Protection Act*, with varying degrees of responsibility for these investigations. Two of those investigations involved allegations against companies in the wood-treating business. I am the principal inspector responsible for an investigation into the offences alleged in paragraph 2 of my Information.

b) **Investigative Sources** In this section, the informant describes in general terms the different types of sources (human sources, system-based sources, confidential informant sources) from whom the informant has received information and indicates that the informant believes the information received to be true.

The informant provides justification for why the informant can reliably accept the validity of the information provided either by virtue of the function performed by the source or the nature of the information source itself (a government database, records required to be maintained). In this example, sources and grounds to believe are presented together in a narrative, chronological form. They could also be presented separately in a more complex Information.

Investigative Sources

3. I have relied on a number of individuals as sources for the information set out below. I have carefully considered the reliability of all sources and I am satisfied that they are trustworthy. I believe the information provided by each of them. Detailed information about sources is provided in paragraphs 13, 15, 16, 19, through 22, and 31, below. For reasons of confidentiality, one source is referred to as "X"

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c) **Main Persons Involved - The Parties** In this section the informant identifies anyone implicated in the investigation including, suspects, those who may be owners of the premises to be searched, custodians of documents, other investigators who have provided information, witnesses who have provided information and confidential sources. The list guides the judicial authority during his or her reading of the entire Information to Obtain and assists in validating the nature of the information and sources. It also identifies sources that may be confidential sources and typically assigns them an indicative symbol (e.g. "X").

Main Persons Involved - The Parties

4. Transportor Ltd. is a company incorporated under the laws of the Province of British Columbia on March 4, 1984. The head office of Transportor is located at 2001 Russell Street, in Vancouver, British Columbia.

5. Alice Freeman (DOB: May 2, 1960) is the president of Transportor Ltd. and has been since its date of incorporation. She owns approximately 90% of the outstanding shares of Transportor Ltd.

6. I discovered the information stated in paragraphs 4 and 5 by means of a search of the corporate records of Transportor Ltd. registered with the British Columbia Ministry of Consumer and Commercial Relations. I conducted this search on October 20, 2014. Copies of the Certificate of Incorporation and the most recent annual return of information are attached and marked as Appendices B and C.

7. John Doe: Inspector, Vancouver Regional Office, Transport Canada [address].

8. Suzanne Leblanc: Inspector, Moncton, Regional Office, Transport Canada, formerly, Vancouver Regional Office Transport Canada [address].

9. Gagnon Chemicals Inc., 2100 Robertson Road, Vancouver British Columbia.

10. Dr. David Langlois: Transport Canada Central Laboratory, Hull P.Q., [address].

11. Holly Grove : Inspector, Hazardous Products Branch, Transport Canada, Vancouver Regional Office [address].

1. In order to protect the identity of a confidential source, referred to as "X" in this affidavit, and to permit this affidavit to be fully disclosed in appropriate circumstances, some of the details about X and some of the information provided by X have been generalized. Although I refer to X as a male in this affidavit, X may be a male or a female

d) **The Investigation – Grounds to Believe Offence Committed**

In this section the informant identifies how the investigation started, providing a brief narrative and overview of how investigative personnel became aware of the offence, and briefly describing the steps taken by the investigative personnel to respond to the event. It should also set out what rule, regulation or statute had been breached with sufficient detail that someone reading the overview would be able to conclude that an offence against that

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particular rule, regulation or statute had been committed. The section should conclude with a statement that a specific offence was committed contrary to the rule, regulation or statute on a particular date in a particular location, including information to link each suspect to the offence alleged.

This section can be quite extensive as it identifies what was observed, who observed it as well as what was learned by the informant in reviewing reports and written statements from witnesses.

Reliability of Sources (paragraphs 13, 15, 16, 19-22, and 31)

Establish the reliability of sources. Provide enough information about the sources relied on to allow the justice to determine whether their information is credible.

Fair Disclosure (paragraph 18)

Fulfill the obligation to make fair disclosure.

Note how the informant has met this obligation in paragraph 18.

Expert Evidence (paragraph 21)

An expert is someone, who on account of training, education or experience is qualified to provide an opinion on a matter that is not within common experience. The informant may refer to the opinion of an expert, as illustrated in paragraph 21 of the sample, if it will help the justice determine whether there are reasonable grounds to issue the warrant. The informant may provide opinions on matters within the informant's own expertise in the affidavit so long as the informant indicates the basis for the expertise.

When relying on experts:

- state their names,
- describe their credentials, and
- identify their opinions and conclusions clearly, so that these are not confused with the facts

Grounds to Believe Offence Committed

13. On August 14, 2014, X phoned the Regional Office of Transport Canada in Vancouver and asked to speak to an officer. Suzanne Leblanc, an officer designated under the *Transportation Safety Act* and the *Transportation Environment Protection Act*, took the call. Ms. Leblanc has 14 years of experience in conducting investigations under these two Acts. X told Ms. Leblanc that he had been employed for over 15 years by a company that does business with Transportor Ltd. X said that in the course of his work, he had discovered some important information about the irresponsible handling of hazardous substances by Transportor Ltd. X said that he would not reveal this information unless the government would agree to "keep his name out of it", because he did not want to lose his job and pension benefits. Ms. Leblanc agreed to do her best to keep X's name confidential. X then revealed his name and the name of his employer

14. X provided the following information to Ms. Leblanc in his conversation referred to in paragraph 13:

- ☐ Transportor Ltd. uses Restora to lubricate and maintain its vehicles. Transportor provides transportation services to a range of shippers in and around Vancouver B.C. Transportor has two outdoor tanks for the storage of Restora at its plant on Russell Street.

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- ☐ Early in June 2014, one of these tanks began springing small leaks. The company was unable to make satisfactory repairs to the tank and decided to construct a new one. The company initially planned to use the one sound tank in the meantime.
- ☐ During the first two weeks of operation with only one tank, Transportor ran out of Restora a number of times when large orders came in and its vehicles required greater maintenance and lubrication. Transportor also discovered that it had to pay its supplier, Gagnon Chemicals Inc., a higher price per litre for Restora and was paying higher delivery charges, because it was placing smaller, more frequent orders. In mid-June, the company decided to resume use of the defective storage tank, and to patch it up as leaks developed

15. X subsequently provided Ms. Leblanc with payroll records and performance evaluations which confirm that X has been working for the company named, in the position stated, for the number of years claimed.

16. Ms. Leblanc confirmed that X is still an employee in good standing by calling the company and posing as a telephone sales solicitor compiling a mailing list for stress management courses.

17. On August 28, 2014, the complaint relating to Transportor Ltd. was assigned to me for investigation, as Ms. Leblanc was about to leave the Vancouver Office to assume a managerial position at our office in Moncton. Ms. Leblanc passed the entire contents of the Transportor file to me and discussed the investigation with me at some length. She recounted to me all the information relating to X that is set out in paragraphs 13 through 16

18. Ms. Leblanc mentioned to me that, coincidentally, her son had worked as an accountant for Transportor Ltd. briefly in 1988, but had been let go when the company lost a major customer and was forced to lay off all employees with less than two years' tenure. She said that her son had found another job about a year later and that she bears Transportor no ill will.

19. I spoke to X for a total of three hours on September 4, 2014 and September 11, 2014. X confirmed the information recounted in paragraphs 13 through 15, and gave me a detailed description of the document signed by Ms. Freeman referred to in paragraph 14. X was unable to locate a copy of the document for me. If I described this document in this affidavit, it might be possible to identify X, as very few people would have access to this type of document.

20. Given the nature of X's employment, it is, in my opinion, reasonable to believe that he would have access to the type of information disclosed to Ms. Leblanc and to me. On the other hand, I believe it is highly improbable that he would have played any role whatsoever in the offences alleged

21. Restora is a product used to lubricate and maintain transportation vehicles. One of the ingredients of Restora is kinetic acid, which is normally present at 10% concentration. I am aware from a report of tests conducted in 2012 by the Transport Canada Central Laboratory that kinetic acid is extremely deleterious to fish. The author of this report is Dr. David Langlois, a biologist granted a doctorate by Queen's University in 1998. Copies of Dr. Langlois's report and c.v. are attached and marked as Appendices D and E.

22. I believe that it normally takes eight to ten months to construct and obtain the necessary approvals to put a new storage tank for Restora into service. My belief is based on discussions with Holly Grove, an inspector with 5 years' experience in the Hazardous Products Branch of Transport Canada. Ms. Grove's principal responsibility is reviewing applications for permits for the storage of hazardous chemicals

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23. On September 7, 2014, I walked around and observed the premises of Transportor Ltd. without entering them. The Transportor plant is near the front of a lot at 2001 Russell Street that covers about three acres. There is a wire mesh fence about four feet high around the lot. I had no difficulty walking around the lot as there is a hiking trail immediately behind and to one side of the lot and there are streets at the front and on the other side. The plant is clearly visible from the streets and the hiking trail. The plant is identified by a sign at the front, near Russell Street, that reads "Transportor Ltd./ 2001 Russell St./

24. When I walked behind the lot, I could see three small shed-type structures behind the plant and two storage tanks typical of those used to store Restora in the northeast corner of the lot. The tanks appeared to have a capacity of about 2500 liters each. I noticed that one of the tanks appeared to be welded in at least a dozen spots on those parts of the surface visible to me. There is a shallow ditch running through the northeast corner of the lot, between the two tanks. This ditch extends beyond the lot for about 200 metres, ending at a small lagoon connected to the Fraser River.

25. At the time of my observations, the ditch was dry, although there was water in the lagoon. I took a sample of water from the lagoon, sealed it in an approved container and marked it. The next day, I sent the water sample for analysis to the Transport Canada Central Laboratory in Hull, Quebec.

26. I have been advised by the Transport Canada laboratory that the sample showed traces of kinetic acid. A copy of the lab report is attached and marked as Appendix H

e) ***Belief that Items are at the Premises to be Searched (paragraph 27)***

In this section, the informant identifies the relationship between the premises to be searched and the items to be seized. The informant must make the connection that there is a reason why the things to be seized are actually at the location to be searched. Corporate records for example, would likely be available at corporate headquarters. Equipment would likely be found in workshops owned by the operator.

For example, cite a statutory requirement to keep a particular document at a designated place. Note how paragraph 30 of the sample illustrates this point.

It may or may not be sufficient to provide evidence that the things to be seized were at the search premises in the past.

Grounds to believe that items to be seized are at the premises to be searched

27. I believe that the items to be seized will be found at the premises to be searched because the type of records identified are normally kept by any business enterprise. Furthermore, Regulation 333 under the *Transportation Safety Act* requires registered users of hazardous chemicals to keep certain records relating to those chemicals for seven years. When I searched the corporate records of Transportor Ltd. registered with the British Columbia Ministry of Consumer and Commercial Relations on October 20, 2014, I noted that the premises at 2001 Russell Street are the only premises registered by Transportor. Therefore, it is reasonable to conclude that Transportor keeps these records at 2001 Russell Street

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f) Belief that items will afford evidence with respect to alleged offence

In this section the informant identifies what role the seized items will play as evidence in respect of the offence(s).

Grounds to believe that items to be seized will afford evidence with respect to the commission of the offences alleged

28. I am requesting authorization to take soil and water samples to test for the presence of kinetic acid near the storage tanks and in other "control" locations at the premises. To obtain an accurate picture, it will be necessary to take samples in dry weather conditions and during and after moderate to heavy rainfall.

29. I am requesting authorization to seize identified handwriting samples because they may be required to identify the author of any unsigned handwritten records seized under the other provisions of the warrant.

30. I am requesting authorization to seize records relating to the structure and organization of Transportor Ltd. or to the names, authority and responsibilities of the directors, officers, agents and employees of Transportor Ltd. because these records may be required to demonstrate the role played in the offences alleged by Alice Freeman and by other directors, officers, agents and employees of Transportor

g) Opinions and Conclusions (paragraphs 31, 32)

Normally, it is best to present "just the facts" in an Information. If it will help the justice understand why a warrant should be issued, conclusions may be offered based on the facts presented as long as they are identified as such.

Conclusion

31. In my opinion, water would flow through the ditch running from the Transportor lot to the lagoon connected to the Fraser River after moderate or heavy rainfall. This water would carry with it other substances present on the Transportor lot, such as any leakage from the storage tanks on the lot.

32. Kinetic acid is classified as a hazardous chemical in Regulation 111 made under the *Transportation Safety Act*. Regulation 222 made under the Act requires companies which use more than 500 litres a year of a hazardous substance to register with Transport Canada and to obtain permits for their storage facilities. Registered users are required by Regulation 666 to report any spill of a hazardous substance to Transport Canada within seven days of the spill. Leakage from storage tanks is considered a spill. I requested a search of the relevant records of Transport Canada and was advised by Federico Lopez, the records clerk who conducted the search, that:

- Over the past five years, Transportor has reported using, on average, 20000 litres of kinetic acid per year.
- Transportor Ltd. is the only registered user of kinetic acid within a five kilometer radius of the lagoon from which I took the water sample.
- Transportor Ltd. has not reported any spills of kinetic acid since Regulation 666 came into force on June 15, 2004

F. Drafting the Warrant to Search

Step Five – The Search Warrant – Form 5

This section outlines what belongs in the actual Warrant to Search to be presented to the judicial official. It provides some important guidelines to follow in drafting the Warrant to Search and includes a sample Information. The package to be provided to the judicial official includes both the Draft Warrant to Search and any supporting documents (i.e. the Information to Obtain). These documents form the basis for the judicial official to exercise his or her authority to issue the Warrant to Search and authorize the search itself within the terms and conditions of the actual Warrant. Annex C contains a sample Draft Warrant to Search which may be used as a model. As with the preparation of the Information to Obtain there are a number of detailed requirements which should be discussed in advance with Legal Counsel.

The Warrant to Search is usually prepared by the informant at the same time as the Information to Obtain. The most important rule to follow is that what is requested in the Warrant to Search and what is disclosed in the Information to Obtain must be completely in agreement. Names, dates, locations and other details must not be different from one document to the next.

What Belongs in a Warrant to Search? With the exception of the grounds for the belief, most of the text provided in the Information to Obtain is repeated in the Warrant to Search. The informant drafts the Warrant to Search for the judicial officer to sign. The signed warrant is the legal authorization to carry out the search and seizure.

It must conform to the legal requirements of Form 5 of the *Criminal Code*. When drafting the Warrant to Search:

- Show the Court issuing the warrant
- Name the informant
- List the following:
 - Persons authorized to execute the warrant
 - The things they are authorized to seize
 - The premises they are authorized to search and
 - The offence alleged to have been committed

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- Include a sentence that authorizes the search and seizure and directs the persons responsible to bring the things seized before a justice. Fill in the proposed time and date, or leave this space blank for the justice to complete.
- State any special conditions for execution of the warrant
- Leave space for the date and place of issuance and the signature of the justice.

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ANNEX A – INFORMATION TO OBTAIN A SEARCH WARRANT

FORM 1

Information to Obtain a Search Warrant

(Pursuant to Section 487 of the *Criminal Code*)

CANADA

Province of

British Columbia

This is the information of John Doe, of the City of Vancouver, in the Province of British Columbia, an inspector designated under the *Transportation Safety Act* and the *Transportation Environment Protection Act*, hereinafter called the informant, taken before me, the undersigned Judge in and for the Province of British Columbia.

The informant has reasonable grounds to believe and does believe that the things described in paragraph 3 do exist, are at the premises described in paragraph 4 and will afford evidence with respect to the commission of the following offences:

That Transportor Ltd. and Alice Freeman deposited or permitted the deposit of a deleterious substance, kinetic acid, in a place and under conditions where the deleterious substance may enter water frequented by fish, contrary to section 42 of the Transportation Environment Protection Act, on an unknown number of occasions, between June 1, 2014 and October 31, 2014, at or near 2001 Russell Street, in Vancouver, British Columbia

The things to be searched for are:

- records relating to the acquisition, storage, handling and use of Restora and other products containing kinetic acid by Transportor Ltd. between June 1, 2014 and October 31, 2014
- soil and water samples from the lands occupied by Transportor Ltd. described in paragraph 4
- samples of the contents of the two outdoor storage tanks in the northeast corner of the lands occupied by Transportor Ltd.

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(RDIMS: 10774741 / SGDDI: 10800095)

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- records containing the handwriting of identified directors, officers, agents and employees of Transportor Ltd.
- organization charts, telephone lists, memoranda, notes, correspondence, job descriptions, performance evaluations and other records relating to the structure and organization of Transportor Ltd. or to the names, authority and responsibilities of the directors, officers, agents and employees of Transportor Ltd.

that will afford evidence with respect to the commission of the offences described in paragraph 2

The description of the premises to be searched is:

all the buildings and surrounding lands occupied by Transportor Ltd. at 2001 Russell Street in Vancouver, British Columbia, including all storage tanks and other structures located on those lands

The informant has reasonable grounds for belief, as set out in Appendix A, attached.

In brief, the informant has reasonable grounds to believe that Transportor Ltd. and its president and principal shareholder, Alice Freeman, permitted the deposit of a deleterious substance, kinetic acid, in a place where it might enter water frequented by fish, on an unknown number of occasions between June 1, 2014 and October 31, 2014. Transportor and Ms. Freeman have been storing a product containing kinetic acid, which is extremely deleterious to fish, in an outdoor storage tank which has developed leaks on several occasions. The storage tank is situated near a ditch that empties into the Fraser River after moderate or heavy rainfall. Transportor and Ms. Freeman also failed to report the discharges of kinetic acid resulting from the leaks to Transport Canada, as required by law.

The informant requests that this warrant be directed to Robert J. Turner, Liza Patrick and John Lipofski, all inspectors designated under the *Transportation Safety Act* and the *Transportation Environment Protection Act* and to a peace officer in the province of BC.

The informant requests that this warrant be valid from November 1, 2014 to November 30, 2014. Although it is not expected that it will take a full month to execute the warrant, this extended period of validity will allow those executing the warrant to seize soil and water samples in dry weather conditions during and after moderate to heavy rainfall.

Wherefore the informant prays that a Search Warrant may be granted to search the premises described in paragraph 4 for the things described in paragraph 3

(Signature of Informant)

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Sworn before me this 31st day of October, A.D. 2014,
at Vancouver, British Columbia

(Signature of Justice)

A Justice of the Peace in and for the Province of
British Columbia

ANNEX B – REASONABLE GROUNDS APPENDIX

Appendix “A”

Information to Obtain Search Warrant

John Doe

Introduction

1. This Appendix sets out my grounds for belief for the issuance of the search warrant requested in my Information. It forms part of the Information to Obtain a Search Warrant under section 487 of the *Criminal Code* of Canada to search:

all the buildings and surrounding lands occupied by Transportor Ltd. at 2001 Russell Street in Vancouver, British Columbia, including all storage tanks and other structures located on those lands

2. I, John Doe, am an inspector assigned to the Vancouver Regional Office of Transport Canada, hereinafter referred to as the informant. I have a master's degree in biochemistry from the University of Alberta. I have taken week-long courses in search and seizure and the rules of evidence sponsored by Transport Canada. I have also taken Transport Canada's fifty-hour courses in marine pollution and industrial chemicals. I have been employed as an inspector for eight years and have participated in over 100 investigations into offences under the *Transportation Safety Act* and the *Transportation Environment Protection Act*, with varying degrees of responsibility for these investigations. Two of those investigations involved allegations against companies in the wood-treating business. I am the principal inspector responsible for an investigation into the offences alleged in paragraph 2 of my Information

Investigative Sources

3. I have relied on a number of individuals as sources for the information set out below. I have carefully considered the reliability of all sources and I am satisfied that they are trustworthy. I believe the information provided by each of them. Detailed information

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about sources is provided in paragraphs 13, 15, 16, 19, through 22, and 31, below. For reasons of confidentiality, one source is referred to as "X".

Main Persons Involved - The Parties

4. Transportor Ltd. is a company incorporated under the laws of the Province of British Columbia on March 4, 1984. The head office of Transportor is located at 2001 Russell Street, in Vancouver, British Columbia.
5. Alice Freeman (DOB: May 2, 1960) is the president of Transportor Ltd. and has been since its date of incorporation. She owns approximately 90% of the outstanding shares of Transportor Ltd.
6. I discovered the information stated in paragraphs 4 and 5 by means of a search of the corporate records of Transportor Ltd. registered with the British Columbia Ministry of Consumer and Commercial Relations. I conducted this search on October 20, 2014. Copies of the Certificate of Incorporation and the most recent annual return of information are attached and marked as Appendices B and C.
7. John Doe: Inspector, Vancouver Regional Office, Transport Canada [address].
8. Suzanne Leblanc: Inspector, Moncton, Regional Office, Transport Canada, formerly, Vancouver Regional Office Transport Canada [address].
9. Gagnon Chemicals Inc., 2100 Robertson Road, Vancouver British Columbia.
10. Dr. David Langlois: Transport Canada Central Laboratory, Hull P.Q., [address].
11. Holly Grove: Inspector, Hazardous Products Branch, Transport Canada, Vancouver Regional Office [address].
12. In order to protect the identity of a confidential source, referred to as "X" in this affidavit, and to permit this affidavit to be fully disclosed in appropriate circumstances, some of the details about X and some of the information provided by X have been generalized. Although I refer to X as a male in this affidavit, X may be a male or a female.

Grounds to Believe Offence Committed

17. On August 14, 2014, X phoned the Regional Office of Transport Canada in Vancouver and asked to speak to an officer. Suzanne Leblanc, an officer designated under the *Transportation Safety Act* and the *Transportation Environment Protection Act*, took the call. Ms. Leblanc has 14 years of experience in conducting investigations under these two Acts. X told Ms. Leblanc that he had been employed for over 15 years by a company that does business with Transportor Ltd. X said that in the course of his work,

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he had discovered some important information about the irresponsible handling of hazardous substances by Transportor Ltd. X said that he would not reveal this information unless the government would agree to "keep his name out of it", because he did not want to lose his job and pension benefits. Ms. Leblanc agreed to do her best to keep X's name confidential. X then revealed his name and the name of his employer

18. X provided the following information to Ms. Leblanc during the conversation referred to in paragraph 13:
 - a. Transportor Ltd. uses Restora to lubricate and maintain its vehicles. Transportor provides transportation services to a range of shippers in and around Vancouver B.C. Transportor has two outdoor tanks for the storage of Restora at its plant on Russell Street.
 - b. Early in June 2014, one of these tanks began springing small leaks. The company was unable to make satisfactory repairs to the tank and decided to construct a new one. The company initially planned to use the one sound tank in the meantime.
 - c. During the first two weeks of operation with only one tank, Transportor ran out of Restora a number of times when large orders came in and its vehicles required greater maintenance and lubrication. Transportor also discovered that it had to pay its supplier, Gagnon Chemicals Inc., a higher price per litre for Restora and was paying higher delivery charges, because it was placing smaller, more frequent orders. In mid-June, the company decided to resume use of the defective storage tank, and to patch it up as leaks developed.
19. X subsequently provided Ms. Leblanc with payroll records and performance evaluations which confirm that X has been working for the company named, in the position stated, for the number of years claimed.
20. Ms. Leblanc confirmed that X is still an employee in good standing by calling the company and posing as a telephone sales solicitor compiling a mailing list for stress management courses.
27. On August 28, 2014, the complaint relating to Transportor Ltd. was assigned to me for investigation, as Ms. Leblanc was about to leave the Vancouver Office to assume a managerial position at our office in Moncton. Ms. Leblanc passed the entire contents of the Transportor file to me and discussed the investigation with me at some length. She recounted to me all the information relating to X that is set out in paragraphs 13 through 16

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28. Ms. Leblanc mentioned to me that, coincidentally, her son had worked as an accountant for Transportor Ltd. briefly in 1988, but had been let go when the company lost a major customer and was forced to lay off all employees with less than two years' tenure. She said that her son had found another job about a year later and that she bears Transportor no ill will.
29. I spoke to X for a total of three hours on September 4, 2014 and September 11, 2014. X confirmed the information recounted in paragraphs 13 through 15, and gave me a detailed description of the document signed by Ms. Freeman referred to in paragraph 14. X was unable to locate a copy of the document for me. If I described this document in this affidavit, it might be possible to identify X, as very few people would have access to this type of document.
30. Given the nature of X's employment, it is, in my opinion, reasonable to believe that he would have access to the type of information disclosed to Ms. Leblanc and to me. On the other hand, I believe it is highly improbable that he would have played any role whatsoever in the offences alleged
31. Restora is a product used to lubricate and maintain transportation vehicles. One of the ingredients of Restora is kinetic acid, which is normally present at 10% concentration. I am aware from a report of tests conducted in 2012 by the Transport Canada Central Laboratory that kinetic acid is extremely deleterious to fish. The author of this report is Dr. David Langlois, a biologist granted a doctorate by Queen's University in 1998. Copies of Dr. Langlois's report and c.v. are attached and marked as Appendices D and E.
32. I believe that it normally takes eight to ten months to construct and obtain the necessary approvals to put a new storage tank for Restora into service. My belief is based on discussions with Holly Grove, an inspector with 5 years' experience in the Hazardous Products Branch of Transport Canada. Ms. Grove's principal responsibility is reviewing applications for permits for the storage of hazardous chemicals
33. On September 7, 2014, I walked around and observed the premises of Transportor Ltd. without entering them. The Transportor plant is near the front of a lot at 2001 Russell Street that covers about three acres. There is a wire mesh fence about four feet high around the lot. I had no difficulty walking around the lot as there is a hiking trail immediately behind and to one side of the lot and there are streets at the front and on the other side. The plant is clearly visible from the streets and the hiking trail. The plant is identified by a sign at the front, near Russell Street, that reads "Transportor Ltd./ 2001 Russell St./
34. When I walked behind the lot, I could see three small shed-type structures behind the plant and two storage tanks typical of those used to store Restora in the northeast corner of the lot. The tanks appeared to have a capacity of about 2500 litres each. I

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2.7.1 Standard on Information to Obtain a Search Warrant

noticed that one of the tanks appeared to be welded in at least a dozen spots on those parts of the surface visible to me. There is a shallow ditch running through the northeast corner of the lot, between the two tanks. This ditch extends beyond the lot for about 200 metres, ending at a small lagoon connected to the Fraser River.

35. At the time of my observations, the ditch was dry, although there was water in the lagoon. I took a sample of water from the lagoon, sealed it in an approved container and marked it. The next day, I sent the water sample for analysis to the Transport Canada Central Laboratory in Hull, Quebec.
36. I have been advised by the Transport Canada laboratory that the sample showed traces of kinetic acid. A copy of the lab report is attached and marked as Appendix F.

Grounds to Believe that Items to be Seized are at the Premises to be Searched

27. I believe that the items to be seized will be found at the premises to be searched because the type of records identified, are normally kept by any business enterprise. Furthermore, Regulation 333 under the *Transportation Safety Act* requires registered users of hazardous chemicals to keep certain records relating to those chemicals for seven years. When I searched the corporate records of Transportor Ltd. registered with the British Columbia Ministry of Consumer and Commercial Relations on October 20, 2014, I noted that the premises at 2001 Russell Street are the only premises registered by Transportor. Therefore, it is reasonable to conclude that Transportor keeps these records at 2001 Russell Street

Grounds to Believe that Items to be Seized will Afford Evidence with Respect to the Commission of the Offences Alleged

31. I am requesting authorization to take soil and water samples to test for the presence of kinetic acid near the storage tanks and in other "control" locations at the premises. To obtain an accurate picture, it will be necessary to take samples in dry weather conditions and during and after moderate to heavy rainfall.
32. I am requesting authorization to seize identified handwriting samples because they may be required to identify the author of any unsigned handwritten records seized under the other provisions of the warrant.
33. I am requesting authorization to seize records relating to the structure and organization of Transportor Ltd. or to the names, authority and responsibilities of the directors, officers, agents and employees of Transportor Ltd. because these records may be required to demonstrate the role played in the offences alleged by Alice Freeman and by other directors, officers, agents and employees of Transportor

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Conclusion

33. In my opinion, water would flow through the ditch running from the Transportor lot to the lagoon connected to the Fraser River after moderate or heavy rainfall. This water would carry with it other substances present on the Transportor lot, such as any leakage from the storage tanks on the lot.
34. Kinetic acid is classified as a hazardous chemical in Regulation 111 made under the *Transportation Safety Act*. Regulation 222 made under the Act requires companies which use more than 500 litres a year of a hazardous substance to register with Transport Canada and to obtain permits for their storage facilities. Registered users are required by Regulation 666 to report any spill of a hazardous substance to Transport Canada within seven days of the spill. Leakage from storage tanks is considered a spill. I requested a search of the relevant records of Transport Canada and was advised by Federico Lopez, the records clerk who conducted the search, that:
- a) Over the past five years, Transportor has reported using, on average, 20000 litres of kinetic acid per year.
 - b) Transportor Ltd. is the only registered user of kinetic acid within a five kilometer radius of the lagoon from which I took the water sample.
 - c) Transportor Ltd. has not reported any spills of kinetic acid since Regulation 666 came into force on June 15, 2004.

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2.7.1 Standard on Information to Obtain a Search Warrant

Appendix B

Transportor Ltd.

Copies of the Certificate of Incorporation

Appendix C

Transportor Ltd.

Annual Return of Information 2013

Appendix D

Kinetic Acid Analysis – Dr. David Langlois

Appendix E

Curriculum Vitae – Dr. David Langlois

Appendix F

Kinetic Acid Analysis – Transport Canada Laboratory Report

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2.7.1 Standard on Information to Obtain a Search Warrant

ANNEX C – DRAFT SEARCH WARRANT

FORM 5

(Section 487)

WARRANT TO SEARCH

CANADA

Province of

British Columbia

City of Vancouver

To John Doe, Liza Patrick and John Lipofski, all inspectors designated under the *Transportation Safety Act* and the *Transportation Environment Protection Act*, public officers and to a peace officer *in the province of BC*

Whereas it appears on the oath of John Doe, of the City of Vancouver in the Province of British Columbia that there are reasonable grounds for believing that the following things:

- records relating to the acquisition, storage, handling and use of Restora and other products containing kinetic acid by Transportor Ltd. between June 1, 2014 and October 31, 2014
- soil and water samples from the lands occupied by Transportor Ltd. described in paragraph 4
- samples of the contents of the two outdoor storage tanks in the northeast corner of the lands occupied by Transportor Ltd.
- records containing the handwriting of identified directors, officers, agents and employees of Transportor Ltd.
- organization charts, telephone lists, memoranda, notes, correspondence, job descriptions, performance evaluations and other records relating to the structure and organization of Transportor Ltd. or to the names, authority and responsibilities of the directors, officers, agents and employees of Transportor Ltd.

will afford evidence with respect to the commission of the following offences:

That Transportor Ltd. and Alice Freeman deposited or permitted the deposit of a deleterious substance, kinetic acid, in a place and under conditions where the deleterious substance may enter water frequented by fish, contrary to section 42 of the Transportation

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Environment Protection Act, on an unknown number of occasions, between June 1, 2014 and October 31, 2014, at or near 2001 Russell Street, in Vancouver, British Columbia

And that the things to be searched for are in the buildings and surrounding lands occupied by Transportor Ltd. at 2001 Russell Street in Vancouver, British Columbia, including all storage tanks and other structures located on those lands, hereinafter called the premises;

This is, therefore, to authorize and require you between the hours of (*as the justice may direct*) to enter into the said premises and to search for the said things and to bring them before me or some other justice.

Dated this 31st day of October A.D. 2014,

at the City of Vancouver,

in the Province of British Columbia

(*Signature of Justice*)

A Justice of the Peace in and for the Province of British Columbia

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2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

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2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

TITLE

Preparation of Information to Obtain Production Orders, Preservation Orders, and Demands

SUBJECT

Transport Canada (TC) enforcement practices sometimes require enforcement officers to seek orders to require the production of documents or data from third parties. In some circumstances, it may be necessary to ensure that computer data is preserved so that subsequently it may be produced. These are called “preservation orders” or “demands”. Production and preservation orders are made by a judge and are similar to search warrants, the difference being that the person in possession of the information must produce it on request, or preserve it for future production, rather than the law enforcement agency going to the site to obtain the information by searching and seizing it.

The *Criminal Code* provides a procedure for obtaining a production or preservation orders for documents or data as well procedures for specific production orders for more specialized information.

The *Criminal Code* also provides a process for a peace officer or a public officer to require those holding potentially important computer data to preserve it for future potential use.

The general procedure for obtaining the production and preservation orders is the same. The peace officer or public officer must prepare an information to obtain a production order similar to that required for the issuance of a search warrant. Issuance of the order is based on the existence of reasonable grounds to believe that an offence has been committed and that the documents or data will afford evidence, assist in identification of an individual or assist in the investigation.

PURPOSE AND SCOPE

This document provides the standard to TC officials on how to prepare an information to obtain a production order or a preservation order or demand.

POLICY STATEMENT

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2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

It is the policy of TC that officials, when preparing an information to obtain a production or preservation order and demands will do so in accordance with the legislative authorities and in accordance with the standard contained in this document.

POLICY REQUIREMENTS/GUIDELINES

GENERAL PRODUCTION ORDER

1. TC officials have the responsibility and duty to enforce the statutory and regulatory requirements of the statutes and regulations for which they have been authorized and to prepare and execute production orders in accordance with the applicable authorities. While there are number of different types of production orders, the most commonly used production order and the one which TC personnel most likely will employ is the General Production Order pursuant to section 487.014 of the *Criminal Code*.
2. This section provides for the making of a production order by a justice or a judge against a person other than a person under investigation for an offence under the *Criminal Code* or another Act of Parliament. The order may require the person to either produce documents or copies of documents or to prepare a document based on documents or data in their possession.
3. Before making the order the justice or the judge must be satisfied by information on oath using Form 5.004 that there are reasonable grounds to believe that an offence has been or will be committed under the *Criminal Code* or any other Act of Parliament and that the document or data in the person's possession or control will afford evidence respecting the commission of the offence. The order itself must be in Form 5.005.
4. A person who is actually under investigation for the offence under investigation may not be made subject to the order to produce.
5. Any general production order made under section 487.014 must provide that the person required to produce the document do so to a Peace Officer or a Public Officer named in the order within the time, at the place and in the form specified in the order. An order may also provide that the document be produced on or through an electro-magnetic medium (487.0192).
6. Recent additional changes to the *Criminal Code* provide that copies of documents obtained under the authority of section 487.014 are admissible as evidence in proceedings under the *Criminal Code* or any other Act of Parliament on proof by affidavit that is a true copy and when attested to in this manner it has the same probative value it would have if it were

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proved in the ordinary way. Documents prepared for the purposes of production are considered to be originals for the purposes of the *Canada Evidence Act*.

7. A production order may also contain special terms and conditions a justice or judge considers appropriate including conditions to protect privileged communications between a solicitor and his or her client.

8. Production orders made under section 487.014 have effect throughout Canada and no endorsement is required for the order to be effective in a territorial division which is not the division in which the order is actually made (487.019(2)).

9. While it may seem obvious, nothing in the rules prohibits or constrains a Peace Officer or a Public Officer from merely requesting information from Third Parties. Out of an abundance of caution, section 487.0195 has been inserted and provides:

487.0195 (1) For greater certainty, no preservation demand, preservation order or production order is necessary for a peace officer or public officer to ask a person to voluntarily preserve data that the person is not prohibited by law from preserving or to voluntarily provide a document to the officer that the person is not prohibited by law from disclosing.

(2) A person who preserves data or provides a document in those circumstances does not incur any criminal or civil liability for doing so.

SPECIFIC PRODUCTION ORDER

10. In recent amendments to the *Criminal Code* a number of specific types of production order were identified as tools that Peace Officers and Public Officers could employ in their investigations. Those include:

- 487.015 Production order to trace specified communication
- 487.016 Production order — transmission data
- 487.017 Production order — tracking data
- 487.018 Production order — financial data

11. For example, section 487.018, provides for specific *ex parte* production orders to be issued to banks and other entities specified under section 5 of the ***Proceeds of Crime (Money***

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2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

Laundering) and Terrorist Financing Act (largely other types of financial institutions and persons who deal with financial instruments) in much the same circumstances as a general production order. These orders, however, relate to production of specific information such as the name or account number of an account holder, the status and type of account and the date on which the account was opened or closed.

12. Before issuing such an order, or indeed one of the other specific production orders (487.015, 487.016, or 487.017), the court must be satisfied that there are reasonable grounds to **suspect** that:

- an offence under federal law has been or will be committed;
- the information will assist in the investigation of the offence; and
- the institution or entity to which the order is addressed has possession or control of the information.

Specific production orders are narrower in scope than general orders and apply to specific types of information and to a defined group of entities having control or possession of such information. Moreover; the threshold for obtaining a specific order is lower than the comparable threshold applicable to a general order. For example, to obtain a general order, the issuer must be satisfied that there are reasonable grounds to **believe** that an offence has been or is suspected to have been committed and that the documents or data will afford evidence relating to the commission of the offence. By contrast, to obtain a specific order, the issuer must be satisfied that there are reasonable grounds to **suspect** that an offence has been or will be committed and that the information requested will assist in the investigation of the offence.

13. Section 487.0193 allows third-party recipients of a production order made under any of sections 487.014 to 487.018 to apply in writing to the justice or judge who made the order — or to a judge in the judicial district where the order was made — to revoke or vary the order, and so long as the notice is given to the Peace Officer or Public Officer named in the order within 30 days of the receipt of the order, the person is not obliged to produce or prepare the document until such time as the court has ruled on the application to revoke or vary.

14. Penalties for failure to comply with a production order are set out in section 487.0198. A summary conviction offence, non-compliance is subject to a maximum fine of \$250,000 and/or imprisonment for up to six months.

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2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

PRESERVATION DEMANDS AND ORDERS

15. The *Criminal Code* provides that at the early stages of their investigation, Peace Officers and even Public Officers may issue a preservation demand (471.012 - Form 5.001) or seek a preservation order (471.013 – Form 5.002) to compel a person to preserve computer data that are in their possession or control. The purpose of these procedures, which are both subject to the lower suspicion standard, is to avoid the destruction and deletion of such data before the granting of a production order or a search warrant

16. The *Criminal Code* allows a Public Officer or a Peace Officer to make a preservation demand directly to the person without having to obtain the authorization of the court. Depending on whether the commission of the offence is made pursuant to Canadian or foreign law, a preservation demand expires after 21 or 90 days.

17. To grant a preservation order, a judge must be convinced that there are reasonable grounds to suspect that the computer data is in the person's possession or control and will assist in the investigation of the offence. If granted, the order will expire after 90 days. Within that time period further investigative actions related to production orders could be undertaken, to cause the parties to actually produce the documents for the investigation, remembering always that the documents may only be produced in response to an order obtained on application by information on oath that:

- an offence under federal law has been or will be committed;
- the information will assist in the investigation of the offence; and
- the institution or entity to which the order is addressed has possession or control of the information.

GENERAL PROCEDURES

18. The following are the steps a TC enforcement officer must take to obtain a production order, preservation order or demand:

1. Identify the offence, the evidence and the place to be searched.
2. Consider less intrusive means to obtain the evidence.
3. Consult with supervisor and the Centre of Enforcement Expertise.
4. Draft the Information and warrant and have it reviewed by Legal Counsel.

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2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

Step One: Identify the Offence, the Evidence and the Information Sought

Start with a description of the specific offence or offences being investigated and ask the following questions:

- Are there reasonable grounds to believe that an offence under the *Criminal Code* or any other federal statute has been committed? Have the elements of the offence been identified? What are the grounds to believe an offence has been committed?
- What is being sought? This must be specific – production orders cannot be used in the hopes that some speculative document might be found.
- Are the documents or data being sought able to afford evidence with respect to the commission of the offence alleged? Why?
- Is the list of documents complete?
- Is the location of the items being sought known? How was this determined? There must be reasonable grounds to believe that the documents are in a particular location in order to get an order for their production.

Once these questions have been answered, review the responses to ascertain if there is enough information to explain the decision. Is it clear that there is enough material to proceed with obtaining a production order or preservation order or making a preservation demand? An Information to Obtain a Production Order requires substantive details. Is more investigative work required?

Step Two: Consider Less Intrusive Means to Obtain the Information

Is a Production Order the most appropriate means of obtaining the evidence? Have you considered asking for the production of the documents or data? Production orders are a useful but demanding investigative tool. Perhaps the evidence sought can be obtained in a less intrusive manner, by merely asking the Third Party to provide the information who might be lawfully entitled to do so. Consider that the *Criminal Code* provides explicit recognition of this approach. There is indeed no harm in asking – 487. 0195.

Step Three: Consult Your Supervisor and Centre

Consult with your supervisor and review steps One and Two. Contact the Centre with any further questions and be prepared to answer the following:

Criminal Code or Other Authority? Is this an application for a general or specific production order, preservation order or demand?

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2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

Choice of Court Which court should receive the application? Are there local practice considerations or concerns? Find out who is the issuing authority in your jurisdiction (e.g. certain provinces have designated certain justices of the peace (JPs) as issuing authority, “regular” JPs cannot perform this function. Also certain searches such as search of a law office can only be authorized by a Superior Court judge.)

Confidentiality Do certain elements need to be kept confidential? Should the following be protected:

- the identity of a confidential informant;
- information about an ongoing investigation;
- sensitive investigative techniques;
- information that would prejudice the interests of an innocent person; or
- confidential business information?

It may be possible to protect some or all of this Information, either temporarily or permanently. Ask the Centre for advice.

Obligation to Make Frank Disclosure Is there any information that is required to be disclosed to the Justice in the interest of fairness? This may mean information that is exculpatory, or embarrassing. The rule is full and frank disclosure.

How Many Informations? If it is proposed to search more than one place, should there be separate Informations to Obtain, or one single overall information supporting all warrants?

Step Four: Prepare Draft Information to Obtain Order

An Information to Obtain an Order to Produce is an affidavit disclosing the grounds as described above and is sworn by the officer requesting the Search Warrant or Order to Produce. The *Criminal Code* provides specific forms for each of these two applications.

Preparation of the Information to Obtain a Production Order should be completed with reference to the provisions set out in *Chapter 2.7.1 of the Desk Book* amended to suit the conditions for the application of a Production Order, Preservation Order or Demand.

The entire package to be given to the judicial officer consists of the unsworn Information to Obtain (including any appendices), and a draft of the actual Search Warrant.

ROLES AND RESPONSIBILITIES

Chapter II	2.7.2 Standard on preparing an Information to Obtain Production Orders, Preservation Orders, and Demands (RDIMS: 11669433 / SGDDI: 11748998)
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Chapter II Legal Processes, Practices and Standards

2.7.2 Standard on Preparing an Information to Obtain Production Orders, Preservation Orders, and Demands

19. Officers are responsible for:

- a. Preparing Informations to Obtain production orders, preservations orders and demands in accordance with the provisions of the applicable statute and regulatory authorities;
- b. causing the informations to obtain production orders, preservations orders and demands to be signed, issued and served on the alleged violator in accordance with the provisions of the applicable statute and regulatory authority;
- c. seeking approval of the form of the informations to obtain production orders, preservations orders and demands from the officer's manager.

20. Managers are responsible for:

- a. ensuring that the Orders, as drafted by the officer, conform with the provisions of the applicable statute and regulatory authority; and
- b. consulting with the Centre of Enforcement Expertise and with the applicable Chief of Enforcement or equivalent.

EXECUTION OF PRODUCTION ORDERS, PRESERVATION ORDERS AND DEMANDS

21. Execution of a production order, preservation order or demand generally follows the same approach as that for the execution of a search warrant, as adapted for the service, production and delivery of the order or demand. As the orders and demands are not being executed on a person accused or suspected of the commission of a crime or a violation, the Charter requirements are minimal.
22. Enforcement officers should consult with Legal Counsel or the Centre in order to ensure that the necessary documentary and other requirements are fully addressed prior to seeking a production order and during the planning and execution of production orders, preservation orders or demands.

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2.7.3 Standard on Interviews and Interrogations

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TITLE

Standard on Interviews and Interrogations

SUBJECT

Officers carrying out inspections, receiving complaints and conducting investigations will question witnesses, victims, complainants and suspects as part of their normal duties.

An interview is often a conversation between an officer and an individual, when an officer is seeking information in relation to compliance verification or to an incident being investigated. Interviewing individuals is an important method of gathering information, about an opinion, a point of view and observations of an incident or event. Interviews may be conducted with complainants, regulatees and independent witnesses. Before an individual is suspected of having committed an offence, the inspector has a wide array of tools available to require the regulated party to produce documents, answer questions and assist the inspector. Annex A sets out the range of authorities by statute authorizing assistance.

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2.7.3 Standard on Interviews and Interrogations

Once an individual is suspected of having committed an offence, (i.e. where the inquiry is leading to a summary conviction offence) a more formal interview or an interrogation takes place. Interrogations or interviews of suspects are used to gather evidence against the suspect and to obtain admissions from them that may help prove the offence against them. These statements are against the personal penal interest of the suspect. This is unlike a statement taken from a person who is not a suspect where what the person says will not be used against the penal interest of the person.

For the statements to be able to be used in penal proceedings against the individual, appropriate cautions must be administered. For a statement to be admissible in court as evidence against the person making the statement, it must be a voluntary statement and not as a result of any fear or favour, promise or inducement.

PURPOSE AND SCOPE

The purpose of this standard is to establish procedures for conducting witness interviews and for more formally obtaining statements from individuals who may be suspected of having committed a summary conviction offence.

This standard applies to all Transport Canada personnel involved in inspection or enforcement duties.

DEFINITIONS

A “witness” is an individual who may have relevant information in relation to the matter being investigated. A witness could be a complainant, an independent observer, an employee of the object of the inspection or investigation, a victim, a person of interest or a suspect. Until the officer conducting the interview forms the opinion that the person is a suspect, there is no obligation to administer a caution.

A “suspect” is an individual who an officer has reasonable grounds to believe may have some degree of responsibility in the incident being investigated, based on the presence of supporting evidence. A suspect is someone who is under suspicion of having committed an offence for which there are penal consequences.

POLICY STATEMENT

It is the policy of Transport Canada (TC) to conduct interviews and interrogations to obtain information ***in a lawful manner.***

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2.7.3 Standard on Interviews and Interrogations

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. Interviews and interrogations may be conducted in the field or in a more formal setting (e.g. office), depending on the circumstances.
2. Preparation is the key to a successful witness interview. Anyone with any knowledge of the incident or the event should be considered a possible witness.
3. Where the questioning of an individual is with a view to obtaining evidence in the form of admissions from the individual that could be used to convict the individual of an offence, then the statements obtained from the individual will only be admissible if they are obtained voluntarily. Voluntariness is assessed by the Court at the time of the introduction of the statement into evidence and may be established by the prosecutor demonstrating that the witness was cautioned that what the witness said might be used as evidence against him in a court of law.
4. Officers should always carry bilingual (English and French) caution cards. It is a good practice to read the caution directly from the caution card, when advising a suspect of the suspect's rights to remain silent.
5. Officers performing interviews and interrogations will respect all individual' rights in accordance with the *Canadian Charter of Rights and Freedoms*. Note that the requirement to administer a caution to a witness only applies if the officer is questioning the individual with a view to laying a charge (summary conviction or otherwise) against the individual. It does not apply to an interview of an individual who, it appears, will not be charged with an offence.
6. Interview subjects involved must be made aware that all statements are voluntary and that they are not required to speak unless they wish to do so, ***unless they are otherwise compelled to answer questions because of authorities set out in the statute***. Statements obtained from individuals who ultimately are charged with offences cannot be used against them unless they have been cautioned pursuant to the *Canadian Charter of Rights and Freedoms*. Annex A contains a list of the TC statutes that permit questioning of individuals pursuant to inspection powers. Statements shall not be obtained by invoking fear or favour, promises or inducements. In addition, persons under penal investigation, detained or arrested will be informed of their rights under the *Canadian Charter of Rights and Freedoms* before questioning.
7. The questioning of youth is governed by the *Canadian Charter of Rights and Freedoms*, the *Criminal Code* and the *Youth Criminal Justice Act*. Given the reduced maturity and heightened vulnerability of youth, officers need to take special care in ensuring that a young

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2.7.3 Standard on Interviews and Interrogations

person's rights (which have extra requirements attached for persons in authority to comply with) are fully respected in a manner that they can understand.

8. During investigations, the reading aloud of the *Canadian Charter of Rights and Freedoms* caution will continue to be the best practice by officers who are interviewing and interrogating suspects, and will be the TC standard.

9. Officers will write the *Canadian Charter of Rights and Freedoms* caution on written statement forms if not already included (standard form to be developed). Where possible, officers should read the cautions from the front of their notebooks, providing a standard basis for providing the caution.

10. The *Canadian Charter of Rights and Freedoms* guarantees certain additional rights when being detained as a suspect. While it may not be the intention of the officer to detain the individual, it is the subjective appreciation of the person being questioned as to whether they believe they are being detained. These rights, however, do not apply to questioning of witnesses or where the individual is compelled by statute to respond. Where the interview subject reasonably believes that he or she is being detained, then this may affect the voluntariness of the statements given by the interview subject and the court may rule that the statements may not be used against the individual in a criminal prosecution (penal). This would not necessarily mean that the statements would be inadmissible in a criminal trial or an administrative hearing (Transportation Appeal Tribunal of Canada) against the individual's employer.

11. It is a good practice when conducting an interview to advise the individual of the nature of the basis for the questioning (i.e. pursuant to authorities under Transport Canada statutes) as well as to remind the interview subject, where this is the case, that he or she, in his or her personal status, is not being detained and is not under arrest (unless the opposite is true).

12. **Note:** This and the following sections (13 – 16) apply only in circumstances where an individual has been accused in his or her personal capacity of a criminal offence (penal). Accordingly, only where a prosecution has been commenced by way of summary conviction or on indictment against an individual accused, and where Crown Counsel seeks to introduce a statement from the individual accused, would the following considerations apply.

13. The following are usually considered by courts in determining if the rights of an accused have been violated:

- a. The general circumstances giving rise to the encounter - whether the officer was providing general assistance; maintaining general order; making general inquiries

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regarding a particular occurrence; or, singling out the individual for focused investigation;

- b. The nature of the officer conduct, including the language used; the use of physical contact; the place where the interaction occurred; the presence of others; and the duration of the encounter;
- c. The particular characteristics or circumstances of the individual where relevant, including are; level of sophistication.

14. When the court has determined that a person was detained during the course of the investigation, the onus shifts on the officer to demonstrate that the officer has “informed” the individual of the individual's rights pursuant to the *Canadian Charter of Rights and Freedoms*, and that the individual understands the situation. The officer's notes must clearly indicate:

- a. that the individual is detained;
- b. the reason for the detention;
- c. their right to contact counsel without delay; including providing the 24 hour legal aid duty counsel number and allowing reasonable access to make that call;
- d. waiver of their right to contact counsel, if they so choose;
- e. their right to not say anything;
- f. the individual understood these rights; and
- g. that the individual was given the opportunity to exercise these rights.

15. The court will consider if the officer attempted to or obtained information before individuals were duly informed of their rights. The court will take appropriate actions to remedy any breach of the *Canadian Charter of Rights and Freedoms*.

16. There is no legal requirement on behalf of the officer to read or write the caution, but there may be a requirement to satisfy the court that the officer was clear in cautioning the accused and if the individual understood the rights. The reading of the caution from the officer's notebook remains the best practice and continues to be the Transport Canada standard.

ROLES AND RESPONSIBILITIES

Officers

17. Officers are responsible for preparing and conducting interviews and/or interrogations in accordance with the law, this guidance procedure/policy, and in a manner that respects individual rights.

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PROCEDURES

WITNESS INTERVIEWS

18. A field interview is the initial point of contact that an officer may have with a witness. The field interview consists of preliminary questioning of an individual who an officer feels may possess information relevant to an occurrence or during the course of an inspection.

19. Questioning of witnesses will be done in a manner that does not induce fear, favour or make any promises to the person to say anything inaccurate.

20. Interviews will be conducted in a professional manner and it will be stressed that any information provided is given voluntarily.

21. Interviews will usually be conducted for the purposes of eventually obtaining a written statement; however, this is not always possible.

22. It is not necessary to caution the witnesses prior to obtaining statements unless, at some point during the interview, the officer has reasons to believe that the witness could be a suspect (see definition) in a penal investigation.

23. Interviews are conducted as follows:

a. interviews may be performed by one officer;

b. in the event that the person does not understand French or English, the onus is on the officer to take all reasonable steps to obtain an interpreter or other person capable of speaking the language of the person in order to ensure that the person understands what is being asked;

c. interviews should be conducted as soon as possible after the event;

d. notes taken during a field interview are to be recorded in the officer's notebook. Refer to **Chapter 2.7.4 Standard on Officer's Note Taking**;

e. witnesses may consult legal counsel. Counsel is not obliged to be present during questioning;

f. witnesses and victims will be informed that statements will be subject to disclosure if court action takes place and may be required to testify in court;

g. individuals required to give a statement will be permitted to review any such statements to refresh their memory prior to giving testimony in court;

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- h. statements will be obtained from all individuals involved in an incident, if practical and possible;
- i. a second officer should be present during the interview if the witness is of the opposite gender from as the interviewer;
- j. it is a best practice and avoids confusion and problems later to interview individuals separately even where there are multiple witnesses to an event; if more than one individual is involved, the officer should remind them not to discuss the event between themselves while interviews are being conducted;
- k. witness statements can be handwritten or typed by the officer (questions and answers or narrative form) or it can be audio or video recorded. The officer will read out loud the statement to the witness and will review to avoid any misunderstanding and make corrections where necessary;
- l. upon completion, the officer must ask the witness to initial every correction made, sign every page, and affix their signature and the date, time and location of where the statement was taken at the end of the statement below a sentence, preferably written by the witness, stating that they have read the entire statement and testify that it is true and correct;
- m. the officer will sign and date the statement as well. If no signature (by the witness) is obtained, detailed notes will be made and the file will be documented;
- n. if the witness refuses to give any kind of interview and/or statement, it must be noted;
- q. if, at any time, during the interview the witness wishes to terminate the questioning, the officer(s) must comply with their wish; and,
- r. all interaction with the witness during the interview should be recorded in writing and it is good practice to record the interview with either an audio or video recorder, so long as the subject is aware and consents.

24. If during the interview, there are reasonable grounds to believe that the witness is a party, in his or her individual capacity to the commission of an alleged offence with a penal consequence, and where the interviewer has determined that the matter will be proceeded with by way of summary conviction or on indictment, the interview subject must be advised of this and that his or her rights under the *Canadian Charter of Rights and Freedoms* apply. The witness becomes a suspect and has the right to remain silent. The suspect must be afforded the appropriate *Canadian Charter of Rights and Freedoms* caution.

25. If the person is detained or arrested, all *Canadian Charter of Rights and Freedoms* rights apply. The *Canadian Charter of Rights and Freedoms* warning will be given by the officer. The

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officer must ask if the person understands the warnings and the caution made. Should the person wish to retain and instruct counsel, the time and opportunity must be provided. Where a person is under investigation the person must be cautioned in the terms of the *Canadian Charter of Rights and Freedoms*.

SUSPECT INTERROGATIONS

26. Suspect interrogations occur when the officer has determined that there are reasonable grounds to believe that a person, in his individual or personal capacity has committed an offence contrary to a Transport Canada statute, **and** where the officer has determined that he or she will be recommending that the matter be proceeded with by way of summary conviction or on indictment.

27. Where an officer has determined that the matter will be proceeded with by way of Administrative Monetary Penalty or where the individual interview subject will not be the accused in his or her personal capacity (i.e. where an employer or corporation will be charged), that person is not a suspect.

28. Note that a suspect interrogation does not give rise to an arrest. The authority to arrest an individual is separate from questioning a suspect. The obligations under the *Canadian Charter of Rights and Freedoms* arise from the determination of the officer that there are reasonable grounds to believe that the individual has committed an offence punishable on summary conviction and that the officer has determined that he or she will be seeking to proceed by way of summary conviction. The authority to arrest **does not** arise from that decision.

28. Where an interrogation of a suspect is conducted, it must be conducted as follows:

- a. interrogations will be performed by an officer and ideally conducted by two officers with each taking notes
- b. every suspect must be informed of their rights in the official language of their choice by an officer. The *Canadian Charter of Rights and Freedoms* warnings should be used for this purpose. It must be clear that the person completely understands their rights;
- c. Duty Counsel phone number
- d. the accused (suspect) may consult legal counsel; counsel is not obliged to be present during questions;
- e. if the accused (suspect) waives the right to counsel, the officer must read the "Waiver of the Right to Counsel" and note their answers;
- f. all accused (suspects) may stop answering the questions and are free to go should they wish to, unless being detained and/or arrested;

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- g. if the accused refuses to talk and give a statement, it should be duly noted;
- h. officers may continue their interrogation and ask questions even though the suspect may not reply;
- i. a secondary caution should be performed, if necessary, for example, when an interrogation has been started by one officer, but needs to be finished by another who was not initially present when the first caution was given;
- j. the environment in which the interrogation takes place should be non-threatening. It must take place in an area which ensures privacy and is free of distractions;
- k. any oral statement obtained should be taken verbatim, where possible;
- l. interrogations may be recorded (i.e. audio/video recording). The accused must be made aware of this. The caution should be part of the recording;
- m. a statement need not be written by the accused, but it should be signed by the accused upon completion;
- n. all handwritten statements should be completely reviewed, read, and if necessary, corrected by the accused. In some cases the officer may have to read the statement back to the witness. If this is done then the officer must make note of it on the statement form;
- o. the accused must be asked to initial every correction, sign every page and sign with the date, time and location of where the statement was taken at the end of the statement below a sentence, preferably written by the accused, stating that they have read the entire statement and testify that it is true and correct;
- p. all interaction with the accused during the interrogation, including all cautions and warnings, as well as the times administered, must be recorded in writing or should be video and audio recorded where possible; and
- q. all interrogation documents must be treated as evidence and will be attached to a case report.

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ANNEX A LEGISLATIVE REQUIREMENTS FOR ASSISTANCE

Statutes Requiring Assistance and response to questions	Provision
<i>Aeronautics Act</i>	<p>8.8 The owner or person who is in possession or control of a place that is inspected or audited under subsection 8.7(1), and every person who is found in the place, shall</p> <p>(a) give the Minister all reasonable assistance to enable the Minister to carry out the inspection or audit and exercise any power conferred on the Minister by that subsection; and</p> <p>(b) provide the Minister with any information relevant to the administration of this Act or the regulations, notices, orders, security measures or emergency directions made under this Part that the Minister may reasonably require.</p>
<i>Transportation of Dangerous Goods Act</i>	<p><i>Powers of inspector</i></p> <p>15. (1) For the purpose of ensuring compliance with this Act, an inspector may, subject to section 16 but at any reasonable time, stop any means of transport for which the inspector is designated and enter and inspect any place, or any such means of transport, if the inspector believes on reasonable grounds that in or on the place or means of transport there are</p> <p>(a) dangerous goods being offered for transport, handled or transported;</p> <p>(b) means of containment being manufactured, repaired or tested on which a compliance mark is displayed or will be affixed;</p> <p>(c) standardized means of containment;</p> <p>(d) books, shipping records, emergency response assistance plans, security plans or other documents that contain any information relevant to the purposes of this Act; or</p> <p>(e) computer systems, data processing systems or any other electronic devices or media that contain information relevant to the purposes of this Act, or that have such information available to them.</p> <p><i>Powers of inspector</i></p> <p>(2) In the course of carrying out an inspection under subsection (1), an inspector may</p> <p>(a) open and inspect, or request the opening and inspection of, any means of containment for which the inspector is designated, including any closures, valves, safety release</p>

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	<p>devices or other appurtenances that are essential to the use of the means of containment to contain dangerous goods, if the inspector believes on reasonable grounds that it is being used to handle or transport dangerous goods or to contain dangerous goods offered for transport;</p> <p>(b) open and inspect, or request the opening and inspection of, any means of containment described in paragraph (1)(b) or (c), including any closures, valves, safety release devices or other appurtenances that are essential to the use of the means of containment to contain dangerous goods;</p> <p>(c) for the purpose of analysis, take, or request the taking of, a reasonable quantity of anything the inspector believes on reasonable grounds to be dangerous goods;</p> <p>(d) examine, or request the examining of, information described in paragraph (1)(d) or (e) that the inspector believes on reasonable grounds is relevant to the purposes of this Act and make, or request the making of, copies of any of it; and</p> <p>(e) ask questions of any person for the purposes of this Act.</p>
<i>Railway Safety Act</i>	<p>28. (1) A railway safety inspector may, at any time,</p> <p>(a) for the purpose of ensuring compliance with this Act and with the regulations, emergency directives, rules, orders and security measures made under this Act, enter any place, other than a private dwelling-place, where activities are carried on that relate directly or indirectly to the operation or maintenance of a railway or the operation of railway equipment, and carry out any inspection that the inspector considers necessary in relation to the matters designated by the Minister under section 27 in respect of which the inspector may exercise the powers of a railway safety inspector;</p> <p>(a.1) require any person appearing to be in charge of the place to produce any document, regardless of physical form or characteristics, for inspection or for the purpose of making copies or taking extracts;</p> <p>(b) seize any property found in the course of that inspection on the railway work or in the railway equipment that the inspector believes, on reasonable grounds, will afford evidence with respect to an offence under this Act, and may submit that property to reasonable tests; and</p> <p>(c) require the attendance of persons whom the inspector deems relevant to the carrying out of the inspector's functions, and may question those persons.</p>

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<p><i>Motor Vehicle Safety Act</i></p>	<p>16. (1) Any person who owns or has charge of a place entered by an inspector pursuant to subsection 15(1) and every person present there shall provide all reasonable assistance in their power to enable the inspector to carry out the inspector's duties, and shall furnish such information as the inspector reasonably requires for purposes of the administration of this Act.</p> <p><i>False statements</i></p> <p>(2) No person shall knowingly obstruct or hinder, or make any false or misleading statement either orally or in writing to, an inspector engaged in carrying out functions under this Act.</p> <p><i>Interference with seized property</i></p> <p>(3) Except with the authorization of an inspector, no person shall remove, alter or otherwise interfere with any vehicle, equipment or component seized by an inspector pursuant to subsection 15(4).</p>
<p><i>Canada Shipping Act, 2001</i></p>	<p><i>Authorized persons and organizations</i></p> <p>211. (1) A marine safety inspector referred to in section 11 or a person, classification society or other organization authorized to carry out inspections under section 12 may, for the purpose of ensuring compliance with a relevant provision, board any vessel or enter any premises or other place at any reasonable time and carry out any inspection that the inspector, person, classification society or other organization considers necessary and that the Minister has authorized them to carry out.</p> <p><i>Living quarters</i></p> <p>(2) Living quarters may not be entered under subsection (1) unless they are entered with the consent of the occupant, under the authority of a warrant issued under subsection (2.1) or for the purpose of ensuring that a vessel complies with a relevant provision.</p> <p><i>Authority to issue warrant</i></p> <p>(2.1) On ex parte application, a justice of the peace may issue a warrant authorizing a marine safety inspector to enter living quarters, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath that entry to the living quarters</p> <p>(a) is necessary for any purpose related to the administration of a relevant provision of Part 8; and</p> <p>(b) has been refused or there are reasonable grounds for believing that it will be refused.</p>
<p>Chapter II</p>	<p>2.7.3 Standard on Interviews and Interrogations (RDIMS 10550545 / SGDDI: 10709690)</p> <p>Issued: 01-06-2015 Last Update: 01-09-2016 Page: 12 of 15</p>

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Use of force

(2.2) A marine safety inspector executing a warrant must not use force unless they are accompanied by a peace officer and the use of force is specifically authorized in the warrant.

Stopping a vessel

(3) For the purpose of carrying out an inspection, a marine safety inspector may direct the master of a vessel to stop the vessel or proceed to the place that the inspector may select, and to moor, anchor or remain there for any reasonable period that the inspector may specify.

Inspections

(4) In carrying out an inspection, a marine safety inspector or, subject to any limitations set out under subsection 12(2) in their certificate of authorization, a person, classification society or other organization authorized to carry out inspections may

(a) direct any person to answer reasonable questions, provide reasonable assistance or put into operation or cease operating any machinery or equipment being inspected;

(b) direct the master of a vessel to prohibit or limit access to any part of the vessel for as long as specified;

(c) direct the master of a vessel not to move the vessel until the inspection is completed;

(d) direct the master of a vessel to muster the crew or to carry out any emergency or safety procedure required by the regulations;

(d.1) direct the operator of an oil handling facility, or a person who proposes to operate an oil handling facility, to carry out any emergency or safety procedure that is required by the regulations or that is described in an oil pollution prevention plan or an oil pollution emergency plan referred to in Part 8;

(e) direct any person who is at the place where the inspection is being carried out to produce for inspection, or for the purpose of making copies or taking extracts, any document that they are required to have, or that the operator of an oil handling facility is required to have on site, under a relevant provision;

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	<p>(f) take photographs and make video recordings and sketches;</p> <p>(g) take or remove for analysis samples of any material or substance or any biological, chemical or physical agents or substances;</p> <p>(h) use or cause to be used any computer system or data processing system at the place where the inspection is being carried out to examine any data contained in, or available to, the system;</p> <p>(i) reproduce or cause to be reproduced any record from the data in the form of a print-out or other intelligible output;</p> <p>(j) take any document or other thing from the place where the inspection is being carried out for examination or, in the case of a document, copying; and</p> <p>(k) use or cause to be used any copying equipment in the place where the inspection is being carried out to make copies of any documents.</p>
<i>Marine Transportation Security Act</i>	<p>23. (1) For the purpose of ensuring compliance with this Act and any regulation, security measure or security rule, a security inspector may at any reasonable time, but subject to subsection (3), board and inspect any vessel or enter and inspect any marine facility if the inspector is designated to inspect the vessel or facility.</p> <p>Powers of inspector</p> <p>(2) When conducting the inspection, the security inspector may</p> <p>(a) require the attendance of and question any person who the inspector considers will be able to assist in the inspection;</p> <p>(b) require any person to produce for inspection and copying any document that the inspector believes, on reasonable grounds, contains any information relevant to the administration of this Act or the regulation, security measure or security rule;</p> <p>(c) seize anything found in the course of the inspection that the inspector believes, on reasonable grounds, will afford evidence with respect to an offence under this Act; and</p> <p>(d) detain any vessel that the inspector believes, on reasonable grounds, is a threat to the security of any person, goods, vessel or marine facility, until the inspector is satisfied that the vessel is no longer such a threat.</p>

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<i>International Bridges & Tunnels Act</i>	<p><i>Duty to assist Minister</i></p> <p>40. The owner or person who is in possession or control of a place that is entered or inspected under subsection 39(1), and every person who is found in the place, shall</p> <p>(a) give the Minister or a person designated by the Minister all reasonable assistance to enable them to carry out the inspection and exercise any power conferred on them by that subsection; and</p> <p>(b) provide the Minister or a person designated by the Minister with any information relevant to the administration of this Act or the regulations, orders, directions or notices made under this Act that they may reasonably require.</p>
<i>Navigation Protection Act</i>	<p><i>Duty to assist</i></p> <p>35. The owner or person who is in charge of a place that is entered under subsection 34(1) and every person who is in the place shall</p> <p>(a) give a designated person who is carrying out their functions under section 34 all reasonable assistance; and</p> <p>(b) provide them with any information that they may reasonably require.</p>

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2.7.4 Standard on Officer Note Taking

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TITLE

Standard on Officer Note Taking¹

SUBJECT

Transport Canada (TC) enforcement personnel are engaged in activities related to inspection, and investigation. During the course of these activities enforcement personnel are required to take notes of their observations and their engagement. Notes are then frequently relied upon to “refresh the memory” of the enforcement personnel when providing testimony

PURPOSE AND SCOPE

This document provides the standard for TC enforcement personnel on proper note taking procedures and governs the procedures related to their preparation, retention and use.

POLICY STATEMENT

¹ Electronic Note Taking is not addressed in this standard, as there is no currently acceptable electronic note taking protocol which Courts have sanctioned as acceptable for their use in legal proceedings.

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2.7.4 Standard on Officer Note Taking

It is the policy of TC that enforcement personnel (inspector/investigation officer) carrying out enforcement activities will take written notes using approved notebooks in accordance with the standard set out in this document. Notes prepared in accordance with this standard may very well become part of the public record.

There is no acceptable substitute for note taking in approved note books. Enforcement officers cannot substitute the use of checklists, reports or other forms of recording activities (audio, video or otherwise) for note taking in accordance with this standard. Note taking is a mandatory requirement. It equally does not replace other enforcement activities such as the use of checklists, data entry or other forms of record keeping.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. TC personnel while on duty have the responsibility and duty to enforce the statutory and regulatory requirements of the statutes and regulations for which they have been explicitly authorized or delegated.
2. The notebook is an important enforcement tool used for recording and recalling information.
3. Transport Canada has yet to address the use of electronic notes. For the time being they are not permitted.
4. Sensitive information is contained in the officer's notebook and must be treated accordingly. The notebook must be kept in a secure (locked) location when not in use.
5. Notebooks are the property of TC and are subject to rules related to the retention of records and files applicable to Canadian government records. Notebooks must be returned to the Department before an officer leaves (e.g. transfer, retirement etc.)
6. The notebook contains details of the officer's personal knowledge of the events occurring immediately before, during, and after the inspection, investigation or enforcement action. The information entered in the notebook must relate solely to the officer's duties.
7. In criminal prosecutions, the Crown must be provided with a copy of the handwritten notes of any officer involved in the matter, whether or not the officer is called as a witness.
8. Copies of officers' notes are to be placed in the disclosure package given to the Crown as part of the Case Report. See Chapter 2.8 for guidance on the preparation of a Case Report.

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9. Notes which contain confidential information will be brought to the Crown's attention. Editing or "vetting" will require officer and Crown Counsel involvement.
10. The officer's written notes must be disclosed to defense and may in limited circumstances be introduced as an exhibit. The notes contained in the notebook are subject to disclosure to the courts.
11. Access to an officer's notebook or portions of the notebook may be granted through provisions of the *Access to Information Act* or the *Privacy Act*. Under the provisions of the *Privacy Act*, an individual is able to make a request to gain access to that portion of an officer's notebook that relates directly to them.
12. Management may request copies of any TC officer's notebook entries for resolution of a public complaint or allegation of misconduct against an officer or for any other TC authorized requirement.
13. Officers use a notebook with sequentially numbered, ruled pages to write down any information gathered. Any loose sheet used to take notes before writing them in the notebook must be kept in the case file. Notebooks are subject to supervisor/manager review, as required, including on a regular basis.

ROLES AND RESPONSIBILITIES

Officers

14. Officers are responsible for:
- documenting the activities they perform on duty, including occurrences, incidents and enforcement actions, in their notebook in accordance with this standard;
 - storing their notebooks in a secure location (e.g. a locked secure desk drawer or filing cabinet located within a TC facility when not being carried by the officer, allowing access to the notes for quality assurance; and
 - turning in their notebooks when they leave TC.

Managers

15. Managers are responsible for:
- ensuring each enforcement officer for whom they have direct line authority are equipped with a TC approved notebook;
 - maintaining a written record of each note book issued to an enforcement officer for whom they have direct line authority sufficient that the manager can

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- effectively track the location of a note book that has been issued, by issuing notebook numbers that are to be recorded both on the notebook and in a log;
- c. providing a secure location for the storage of TC notebooks and related records;
 - d. reviewing officers' notebooks and initialing and dating the notebook when reviews are conducted;
 - e. retrieving all notebooks from a TC officer when that officer leaves TC;
 - f. retaining TC notebooks and related records in a secure manner, including those notebooks that have been retrieved from TC officers that have left TC;

The CEE will distribute initial notebooks and Caution and Warning cards to all inspectors. Managers may obtain additional TC approved notebooks by ordering them from the TC Inspector Clothing and Equipment Catalogue RDIMS #10821026, item TC-1004429. Supplemental or other items including Caution and Warning Cards are separately issued and may be obtained from the CEE.

Note: Caution and Warning information contained in the existing stock of notebooks should not be used by enforcement officers as it is superseded by the terms of *Chapter 2.10 – Standard on the Use of Cautions and Warnings*. Revised Caution and Warning Cards will be issued to each enforcement officer.

PROCEDURES

16. Complete the first page of the notebook (i.e. name, identification or badge number (if applicable, location, date of the first entry and date of last entry). There should be no blank spaces.
17. Document only the information that relates to oversight and enforcement duties.
18. Make the note/entry at the time the information is gathered or as soon as operationally possible after the occurrence (within 24 hours).
19. If information is recalled after the fact, additional entries may be added to the notebook. Additional entries are not to be included with the original entry; a new entry must be made. The new entry should include recalled facts and start with a reference to the incident.
20. All entries must be legible and clearly written in black or blue ink. If an officer's handwriting is difficult to read, they must print their notes.
21. Always note complete names, not initials. Names must be printed clearly and it is preferable to show the family name in capital letters.

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22. When documents or items/specimens are taken as evidence, record the documents or items/specimens in the notebook, as this assists in ensuring the chain of custody for evidence seized.
23. Ensure that notes include the indicators that provided the reasonable grounds to support the inspection or investigation. Record the names of the officers who handled evidence, the tools or equipment used to complete the inspection, any samples taken or tests conducted and the results of any samples or tests.
24. Officers may draw sketches in their notebooks if it will make their notes more complete.
25. Notebooks must be kept in a secure place when not being carried by the officer.
26. Upon an officer's request the court may grant permission for officers to refer to their notes for the purposes of refreshing their memory. Officers are not to read from their notes on the witness stand unless specifically instructed to do so by the court, defence counsel or the Crown.
27. If requests are received from an individual for access to notebook information, advise the person to file an application through the ATIP process.
28. Upon dismissal, retirement or resignation, the officer will remit to their Manager all notebooks which will then be held for safekeeping.
29. When a manager reviews an officer's notebook, the manager is to date and initial the notebook at the location in the notebook where the manager has finished his or her review.

NOTE TAKING REQUIREMENTS

30. Notes must be written in a professional, legible and objective manner and should not include or reflect subjective statements or opinions.
31. Each new entry is marked with the date and/or time and is ended with a line covering the entire width of the page. When there are multiple entries on a single day, the first should include the date and additional entries should include the time.
32. No information may be removed. All corrections must be made by striking the incorrect entry with a line and must be initialed by the officer. The correct entry must be inserted with the officer's initials. More particularly, when an error is made at the time of entry, it is to be dealt with by drawing a single line through the error, initialing the strikethrough and then indicating the correct information. Where the error is discovered later, the error must be circled with a note

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indicating that this information has been corrected in a later entry. The circle must be dated and initialed. The new information should then be cross referenced back to the entry made in error with a note explaining the new information as well as when the error was discovered and that the current entry is correct.

33. Notes establish continuity and the timeliness of actions taken. Notes should contain pertinent information such as:

- a. date and time of the event (commenced and completed);
- b. location;
- c. persons' name, address, telephone number, date of birth;
- d. persons' physical description, mental and emotional states at time of event;
- e. persons' company name;
- f. persons' verbatim statements made at the time of the event;
- g. licensing and vehicle, vessel and aircraft information;
- h. any Canadian Police Information Centre (CPIC) and TC information system information that is obtained about a person or vehicle;
- i. information on seized items (description, condition, quantity, etc.);
- j. evidence gathered;
- k. general description of the event and actions taken by all persons involved;
- l. weather;
- m. names of other officers present and/or assisting;
- n. the name, rank and agency of the person to whom the evidence, exhibits and persons received or referred to;
- o. time/date that cautions and rights under the Canadian Charter of Rights and Freedoms were read to the person from the "card" and the person's response to them;
- p. time counsel was called/contacted;
- q. time any assisting officer arrived;
- r. time the police, investigator, etc., was notified, and/or arrived, and/or took control of the exhibits and person;
- s. promises of confidentiality (or not) and,
- t. any other measures taken relative to the inspection or investigation.

34. Officers must not:

- a. erase entries. If a mistake is made, the officer will strike through the incorrect entry with a line and initial the correction; and where a correction is made at a later time

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the correction must be cross referenced to the original entry as described above in paragraph 31;

- b. use quotation marks unless the officer is writing what was said verbatim;
- c. leave any lines blank. Draw a line through any unused portion of a page;
- d. remove pages from the notebook.
- e. use the notebook as a personal log for matters unconnected with the duties of the officer; and
- f. use shorthand or abbreviations. If an officer wishes to use abbreviations, a list of them must be kept in their notebook. They will need to make it available to court representatives or other persons who may be required to read and understand the notes.

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TITLE

Standard on Executing a Search Warrant

SUBJECT

Transport Canada (TC) enforcement practices sometimes require officers to execute or participate in the execution of search warrants. Such warrants are obtained from judicial authorities pursuant to the terms of the *Criminal Code*. The execution of a search warrant is to be a balanced and responsible exercise of authority.

PURPOSE AND SCOPE

This standard provides the direction to TC officers on how to prepare for and execute a search pursuant to the legal authority of a search warrant. Special sections set out the considerations for the exercise of a consent search and the exercise of a search pursuant to a “dwelling house” warrant under statutory authority other than the *Criminal Code*. This chapter should be read in conjunction with *Chapter 2.7.1 Standard on Information to Obtain a Search Warrant*.

POLICY STATEMENT

It is the policy of TC that its personnel, when executing a search warrant, will do so in accordance with the legislative authorities and in accordance with the standard contained in this document.

Under the *Canadian Charter of Rights and Freedoms*, everyone has the right to be secure against unreasonable search or seizure. A search will be considered reasonable if the search is authorized by law, the law is reasonable and the search is carried out in a reasonable manner.

POLICY REQUIREMENTS/GUIDELINES

This standard sets out the requirements for the execution of a search in a reasonable manner. It will help ensure that evidence gathered will be admissible in any subsequent legal proceedings. The Centre of Enforcement Expertise (the “Centre”) must be consulted for advice and support in preparing the necessary documents (i.e. the Information to Obtain a Search Warrant) and at any point during the preparation for the execution of the search warrant where officers may require planning assistance.

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The execution of search warrants is often influenced by local practices in place in each jurisdiction and sometimes in each judicial district. Always ensure the process followed is acceptable in your jurisdiction. Execution of a warrant comes down to planning and will vary depending on a number of circumstances (location to be searched, things to be seized, risk associated with persons on site etc.).

IMPORTANT CONCEPTS

Peace Officers and Public Officers

Peace Officers, Public Officers and other federal law enforcement officials may be involved in the execution of search warrants. Because several provisions of the *Criminal Code* mentioned in this chapter apply only to Peace Officers and Public Officers, it is important for all Transport Canada enforcement personnel to know their status. The terms “Peace Officer” and “Public Officer” are defined in section 2 of the *Criminal Code*. There are currently no Transport Canada enforcement personnel with the status of “Peace Officer, however, all TC officers would be considered public officers for the purpose of applying for and executing a warrant. In this context, public officers to whom the warrant is issued, which also means those who will be actually executing the warrant must be named in the warrant. Unnamed public officers may not participate in the execution of a warrant, whereas a Peace Officer may.

If unsure of your status, check with your supervisor or legal advisor.

Principles

A search should be thorough and balanced. The purpose is to find and seize all the evidence mentioned in the warrant, whether or not it conforms to a particular theory of the case.

In many cases, for warrants executed in respect of corporations, it is common that the persons on site will, after a reviewing the warrant (not the Information to Obtain) and discussing it with the lead officer, voluntarily turn over the records and things to be seized. As a matter of practice this option should always be presented early for persons on site. It may avoid a long search and disturbance to the company.

A reasonable amount of force is permitted, as defined by section 25¹ of the *Criminal Code*, in the execution of the warrant by certain authorized personnel. Do not resort to the use of force

¹ 25. (1) Every one who is required or authorized by law to do anything in the administration or enforcement of the law
(a) as a private person,
(b) as a peace officer or public officer,
(c) in aid of a peace officer or public officer, or

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unless you are authorized to use force, have received adequate on-the-job training and are suitably equipped. Public Officers are not considered by TC to be “authorized personnel” for the purposes of exercising force.

Information regarding searches is to be treated confidentially.

The greater the expectation of privacy in the place you search, the more cautious you should be in exercising your authorities (i.e. dwelling house vs. business location).

One or more officers authorized by the warrant must be present throughout the search and must take responsibility for the control and conduct of the search. These officers can obtain reasonable assistance from other persons acting under their direction. An officer "authorized by the warrant" refers to an individual who is named in the warrant or to a peace officer who belongs to a class of Peace Officers mentioned in the warrant.

Practices

To use the material you seize as evidence, you must keep an accurate record of when and where it was seized and whether it was altered in any way between the time of seizure and the time of introduction as evidence. [For details, see *Chapter 2.7.6 Collection, Preservation and Control of Evidence and Property*.]

Keep detailed notes about the conduct of the search. [See *Chapter 2.7.4 Standard on Officer Note Taking*.]

Follow your own organization's procedures to obtain authorization and approval at various stages in the search process.

STEPS IN THE EXECUTION OF A SEARCH WARRANT

The basic steps involved in the execution of a Search Warrant under section 487 of the *Criminal Code* are found below. Annex A contains an example of a Search Warrant of the type that Transport Canada enforcement personnel could have obtained. The sequential process for the preparation, arrival, conduct and follow-up activities consist of four basic steps. They are:

1. Planning the Search
2. Arriving for the Search
3. Conducting the Search

(d) by virtue of his office, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

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4. Following up after the Search

PLANNING THE SEARCH

Plan a Search Strategy

Develop a comprehensive plan, mapping out who will do what, when and where. Build some flexibility into your search strategy to allow for contingencies. Consult experienced officers, if questions arise.

Consider the following in the development of the plan:

- the type of material authorized to be seized
- the location and physical layout of the search premises
- the history and lifestyle of the people likely to be at the search premises
- the extent of resistance anticipated and
- the names and positions of individuals to be interviewed at the search premises, recognizing that it may be preferable to conduct interviews at a later time.

The plan should include:

- complete threat risk assessment
- entry points
- how to secure the grounds
- arrangements to notify local police of the time, date and location of the search if that is the normal practice
- names of individuals who will participate in the search and the duties assigned to them , which team normally includes: Team leader, Secondary, Exhibit man,
- lines of authority for each search location and for the entire search effort
- arrangements for communications between each search location and headquarters and between search premises, identify command post
- arrangements for transportation to and from the search premises
- arrangements for access to Peace Officers, legal advisors, computer experts and other experts
- supplies and equipment required (search kit to include camera, evidence bags, logs, gloves, notebook, tape, markers, safety equipment, flashlight etc.)
- names and expected location of individuals to whom the warrant should be presented and background check on these individuals
- names of individuals to be interviewed
- time schedule for search activities
- arrangements for relief personnel
- arrangements for meals and accommodation and
- arrangements for the secure packaging, transportation, processing and storage of items seized (refer to Chapter 2.7.6 Collection, Preservation and Control of Evidence and Property).

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Pre-search briefing

The plan should also include arrangements for endorsement of the warrant if necessary, as outlined in the below:

Endorsement for Execution in Another Jurisdiction

If the warrant was issued in one territorial jurisdiction, but will be executed in another, you must have it endorsed by a justice in the territory of execution. Use **Form 28** of the *Criminal Code*. Your legal advisor can assist with the application.

Organize the Search Team

Decide how many people are required for the search and for backup. Are there requirements for particular linguistic abilities, security clearances or other special attributes? Are the services of Peace Officers, legal advisors or other experts required? Make contingency plans to access these individuals quickly should their assistance be required.

If individuals from other agencies will be participating in the search, plan to minimize future demands on their time. Keep in mind that if you ask a municipal police officer to seize evidence, the officer may be required to testify at trial.

Designate one officer to take responsibility for the overall conduct of the search at each search location. Usually, this officer will:

- present the original signed warrant and discuss search procedures with the occupants
- deal with any claims that the warrant is defective
- deal with the request to voluntarily turn over things to be seized
- deal with any suspects and counsel present at the scene, and even where the person is entitled to speak with a lawyer, a search may begin without the lawyer being present.
- deal with claims of solicitor-client privilege
- deal with any subsequent follow up media inquiries and
- ensure that the report or return to the issuing justice (form .2) is prepared and filed by the officer designated as the exhibit officer. .

In addition, designate one or more officers to:

- liaise with other search teams and headquarters
- handle security
- search computers
- take samples or conduct scientific tests
- take photographs or make video and audio recordings
- handle seized material – (exhibit officer - Critical that one individual setup exhibit post and take charge of all seized evidence.)
- coordinate vehicles and transportation.

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- Conduct the physical search (two or more officers depending on location size, amount of things to seize etc.)

Have the officers' search in pairs or have two officers search the same area, one after the other, to reduce the risk of missing evidence. When searching a dwelling-house, it is best to have both a male and a female on the search team. No officer should search alone unless it is absolutely necessary.

It is a best practice is to cross-search, i.e. one officer's searches from right to left, the other from left to right.

Brief the Search Team

Brief the members of the search team on the overall search strategy and on their own roles. Ensure that all officers understand the lines of authority and communications established for the search. Give team members enough background information to conduct the search effectively. Provide all officers with the necessary documentation (e.g. a copy of the warrant and any briefing materials prepared). If the case is complex, give all team members a copy of the Information to Obtain the warrant.

Remind all officers of their obligation to keep information relating to the search confidential. Run through the following checklist before you start the search.

Last-Minute Checklist

- Check that the description of the premises to be searched given in the warrant is correct; hopefully Officers will have done a reconnaissance visit prior to the search to identify all buildings, entry points etc.
- Check the business hours of the occupant if searching an office. Is entry to the search premises at the time planned possible?
- Is the warrant signed and complete? Is all information filled in correctly? Was the warrant issued or endorsed by a justice in the jurisdiction where it will be executed? If the original is not available, does the warrant authorize proceeding without the signed original?
- Have local police been notified of the time, date and location of the search?
- Do the members of the search team:
 - have the original warrant and copies
 - have appropriate credentials, equipment, supplies and briefing material
 - know when and where the team will meet
 - have transportation to the search premises and
 - know how to contact headquarters and other search teams?
- Has there been a significant change in circumstances since the warrant was issued? Do not execute the warrant if you cease to have reasonable grounds to believe as specified in section 487 of the *Criminal Code* or you become aware of new material information that should be disclosed to the justice. You may apply for a new warrant in appropriate cases.

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When Can You Execute the Warrant

Date

Dates in the warrant must be strictly complied with. If the warrant allows flexibility as to the date of execution, commence and complete the search within a reasonable time after you are authorized to commence it. What is reasonable will depend on the circumstances. It is advisable to consult a legal advisor if you intend to wait more than 5 days to commence the search or to spend more than 5 days at the search premises.

Time

Execution must begin between 6:00 a.m. and 9:00 p.m. unless the warrant states that it may be executed outside those hours. Once the search has begun, you may stay on the search premises for a reasonable length of time to complete the search. If necessary, you may remain on the premises overnight, unless the warrant says you cannot.

Normally, a warrant authorizes only one search, and it may be considered "spent" the first time that all officers vacate the premises. Do not plan to have the entire search team depart from the premises until the search has been completed, unless the warrant specifically allows officers to depart from and return to the premises.

Lengthy Searches

If you expect the search to last for several days, you may accommodate the occupants by confining your search to normal business hours so long as:

- the warrant allows you to depart from and return to the premises from time to time
- you are able to adequately secure the search premises in your absence and
- the delay will not unreasonably interfere with the execution of the warrant.

ARRIVING FOR THE SEARCH

Entry and Announcement

Normally, upon arrival at the premises to be searched, the following steps should be taken:

- Announce your presence by knocking, ringing the bell, using a loud speaker, etc.
- Identify yourself as an officer.
- State that you are there to execute a search warrant.
- Request admission to the premises.
- Then, if you are denied admission or you have waited a reasonable period of time to be admitted, the "Peace Officer" attending may use reasonable force to gain entry.

You may enter immediately, without taking these steps, only when immediate entry is required to ensure your own safety, to save someone on the premises from death or injury, or to prevent the removal or destruction of evidence. Document the reasons for an immediate entry in your notes.

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Once entry has been gained to the premises, if there is no *responsible person* there, it is advisable to delay the search until such a person is located, unless there is a need for immediate action.

A responsible person is, in the context of a residence, an adult person; for other premises, an adult who claims authority to speak for the occupant or, if no one claims authority, an adult whom you judge to be accountable. By way of guidance, a sales manager or a production supervisor would normally be considered accountable, while a receptionist or a repair person would not.

Weigh the likelihood that evidence will be destroyed or removed if you wait, and consider the practicality of maintaining surveillance at the search premises to protect the evidence until a responsible person arrives. If you proceed with the search in the absence of a responsible person, document the reasons in your notes.

If the search premises are not in good condition upon arrival, document this in your notes. It may be advisable to take photographs or make a video recording to preclude false claims that damage was caused by the search team.

Possession, Production and Posting of Warrant

As soon as possible, normally before you commence searching, you should:

- show the original warrant to a responsible person at the search premises
- offer to provide a copy of it, and
- allow the person to compare the copy to the original, if requested.

Take a few minutes to explain how the search will unfold before you begin searching, unless there are urgent circumstances requiring immediate action. This is intended to reduce hostility. You may also be able to obtain helpful information, for example, on the location of particular material. If you speak to any individual at the premises about providing information or assistance, you should make it clear that there is no obligation to provide it (unless there is a legislative requirement to do so).

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When you execute a warrant, section 29² of the *Criminal Code* requires you to have the original warrant when feasible, and to produce it when requested. The box below discusses this point further.

Producing the Warrant and the Information

Section 29 of the *Criminal Code* requires you to produce the warrant when requested. While a literal reading might suggest otherwise, you are not required to show the warrant to everyone who might ask to see it. Use your judgment when deciding whether to produce it; showing the warrant to the appropriate people can facilitate execution of the warrant.

When searching the premises of a corporation, you are not obliged to show the warrant to every employee; produce it for a responsible person and, if helpful, for other senior officials. If you search an apartment with two tenants, show the warrant to both tenants if asked to do so; do not show it to the landlord, unless this is necessary to gain access to the premises.

The warrant should be available at the search premises throughout the search in the custody of an officer authorized by the warrant. If no responsible person is present when you execute a warrant, post a copy of it in a prominent location at the premises and leave it there when you depart. If someone asks to see the Information to Obtain the warrant, **do not show it** unless you have been directed or advised to do so by your supervisor or legal advisor. Explain that information are court documents and that anyone who wants access to one may apply to the court named on the warrant.

Securing the Premises

You may take reasonable steps to ensure that evidence is not destroyed, concealed or removed when you execute a warrant. This authority should be exercised by the Peace Officer attending in support of the execution of the warrant. Section 25 of the *Criminal Code* sets limits on the use of force and in any circumstance where any force is to be exercised an attending Peace Officer should exercise the force, not the TC officer. Depending on the circumstances, it may be reasonable to:

- secure exit points (at the beginning: no one in, no one out other than the lawyer), washrooms etc.
- maintain surveillance of individuals who remain on the premises, as discussed under the heading *Surveillance and Detention* in the section of this Statement entitled *Conducting the Search*
- seal garbage chutes, shredders and incinerators

² 29. (1) It is the duty of every one who executes a process or warrant to have it with him, where it is feasible to do so, and to produce it when requested to do so.

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- seal areas or containers on the premises until they have been searched
- "freeze" computer or communications systems and post guards at exits to monitor the removal of material from the premises³.

Make sure that the steps you take to secure the premises interfere as little as possible with the lawful activities of the occupants.

Requests to Delay Search

You may accommodate reasonable requests for delay made by the occupant, if there is no urgency to execute the warrant. For example, you may agree to wait a reasonable period of time for a senior corporate official to arrive before commencing the search. If other premises are also being searched, advise the other search teams of any delay.

You are not required to delay the search of *premises* under a warrant to allow consultation with counsel. However, you may choose to do so if:

- the delay will not unreasonably interfere with the execution of the warrant and
- you are able to adequately secure the premises pending the execution of the warrant.

If you refuse to delay the search, you might agree to allow a reasonable period of time for consultation with counsel before you remove any material from the premises.

Claims of a Defective Warrant

If a lawyer or anyone else at the search premises claims that the warrant is defective, you will have to decide how to proceed. The first issue to address is whether the warrant is valid.

If there is a minor defect in the warrant, such as a missing letter in a street name, with all other identifying information correct, the warrant may be valid. If it is feasible to do so, consult your legal advisor or supervisor before executing a warrant with any error, even a minor one. If you cannot consult your supervisor or legal advisor, use your own best judgment as to the validity of the warrant.

If there is any doubt as to the premises the warrant authorizes you to search or the persons who are authorized to execute the warrant, it is probably best not to proceed. Consider the effect it will have on the case if you proceed to execute the warrant and a court ultimately decides that the warrant was invalid and the evidence obtained should be excluded. If you conclude that the warrant is valid, you may proceed as planned unless you are served with a court order to suspend the search.

If you have any doubt about the validity of the warrant, the safest course is to apply for a new warrant. If it is not feasible for a member of the search team to make the application, can a

³ The seizure of computer records or equipment must be carefully planned. While it may not be appropriate to physically remove computers and electronic mediums, in some cases it may be advisable to do so. The Code allows for the use (or better yet: cause the use) of computers onsite to located and seize records. If you intend to seize electronic evidence, ensure that you speak with Counsel at the drafting stage of the warrant (for assurance that principles of R. v. Vu are respected) and at the execution planning stage.

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colleague back at the office do it? It may be possible for a Peace Officer attending to obtain a telewarrant, but this should be considered only as a last resort as it engages the Peace Officer in a more substantive role within the investigation. Consider also whether you can and should take any steps to secure the premises while you wait for the new warrant.

Exigent Circumstances

Section 487.11⁴ of the *Criminal Code* provides that Peace Officers or Public Officers who have been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of the *Criminal Code* or any other federal statute may, in the course of their duties, exercise any of the powers described in subsection 487(1) of the *Criminal Code* without a warrant if the conditions for obtaining a warrant exist but it would be impracticable to obtain a warrant because of exigent circumstances.

Exigent circumstances will generally be held to exist if there is an imminent danger of the loss, removal, destruction or disappearance of evidence if a search or seizure is delayed. So, if you are a Peace Officer, or a Public Officer who meets the requirements of section 487.11, if the conditions for obtaining a warrant exist and there are exigent circumstances, you may be able to rely on section 487.11 as authority to remain on the premises and take reasonable steps to secure them until a new warrant is obtained.

Use of this provision is only possible to explain or justify decisions taken during the course of the search. It cannot be used to avoid the proper preparation and execution of a search warrant where time, and resources permit. It may “save” a search, but cannot be the basis for a search which could have been legally authorized in advance.

Keep in mind that the courts are reluctant to find that exigent circumstances exist. Remember also that the courts are particularly vigilant to protect privacy in dwelling-houses.

The section above, *Securing the Premises*, discusses the steps that officers executing a valid warrant may take to secure search premises. If you are acting without the authority of a warrant, pursuant to section 487.11, you should take the **minimal** steps required to protect the evidence. Keep in mind that there is a legal presumption that warrantless searches and seizures are unreasonable. Any step you take to secure search premises pursuant to section 487.11 may be judged as a warrantless search or seizure. If your actions are challenged, the Crown will have to prove that you acted reasonably. So, if you decide to take steps to secure the search premises pursuant to section 487.11, take careful notes of the circumstances relating to your decision.

⁴ 487.11 A peace officer, or a public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament, may, in the course of his or her duties, exercise any of the powers described in subsection 487(1) or 492.1(1) without a warrant if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would be impracticable to obtain a warrant.

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Be sure to make full disclosure about the defective warrant and about any steps taken to secure the search premises in the Information to Obtain the new warrant.

If you conclude that the warrant is invalid and that you cannot or should not rely on section 487.11 to secure the premises, you should vacate them until you have obtained a new warrant. In any event, follow the lines of communication established for the search to tell your supervisor or legal advisor about the claimed defect.

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CONDUCTING THE SEARCH

Treatment of Individuals

Treat any individuals you encounter at the search premises courteously and professionally. It is in your best interest to create a calm atmosphere.

Arresting and Searching

A warrant issued under section 487 of the *Criminal Code* does not confer any power to arrest, detain or search individuals present at the search premises. Nor does it give you any authority to prevent an individual found at the search premises from leaving. Public Officers should not attempt to arrest, detain or search an individual. If it is reasonable, individuals may be prevented from entering the search premises during the execution of the warrant, however, that decision would be best made by the Peace Officer attending the search. Note that it would probably be considered unreasonable to prevent a lawyer from entering the premises to speak to a client about the search.

Surveillance and Detention

If it is reasonable, you may keep individuals who remain on the search premises under surveillance and limit their movements to ensure that evidence is not destroyed or concealed. The decision to limit movement may also be one which should be made by the Peace Officer attending the search. If you do this, it could be viewed as detention within the meaning of section 10 of the *Charter*. Think in terms of how the court may perceive the situation. If your actions may qualify as detention, caution the individuals involved. See the box below, *Cautions for Arrest or Detention*.

There is no clear distinction to indicate when surveillance becomes detention. Perhaps the issue is one of limitation versus direction; you may limit the actions or movement of individuals without detaining them, but if you direct their movements, you may be crossing into the area of detention. For example, it probably would not be considered detention to prevent employees from entering a storeroom while you search it. Requiring employees to remain out of an area being searched must be reasonable in the circumstances. If, for example, a search involves locating and seizing USB sticks, surely all personal on site should be instructed to back away from all computers and desks and be transferred into the kitchen area and to remain there. Allowing free movement under such circumstances puts the entire search at risk. Plus officers must be able to freely search the location, without being obstructed.

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Cautions for Arrest or Detention

If an individual is arrested or detained by a Peace Officer at the search premises, that Peace Officer must inform the individual of the reason for the arrest or detention, advise the individual of the right to retain and instruct counsel without delay and afford the individual a reasonable opportunity to retain and instruct counsel, as required by section 10 of the *Charter*. They must also provide an appropriate right to silence warning. ***TC personnel do not have the authority to arrest individuals and the limited statutory authority to detain (i.e. Canada Shipping Act, 2001) is not on the same footing.***

Where TC officers have determined to charge someone with a summary conviction offence, then they are obliged to inform that person of that decision, before they seek to obtain statements from them. (c.f. *Chapter 2.7.3 for more details*)

Questioning Individuals

If you discuss a matter of substance with an individual at the search location, follow the practices set out in *Chapter 2.7.1*, and be sure to provide all the appropriate cautions.

If you speak to any individual at the premises about providing information or assistance, even if there is no obligation to caution the individual, you should make it clear that there is no obligation to provide information or assistance, unless there is a legislative requirement to do so. On the other hand, where such authority exists, it is common to ask the assistance of employees on site to access and obtain computer records.

Counsel for Other Individuals at the Search Premises

In addition, it is advisable to inform the individual to whom you present the warrant and anyone else who asks that they may consult counsel if they wish.

Photographs and Videos

If it is reasonable, you may take photographs and videos of the search location and of objects at the location while avoiding to the filming of individuals.

What to Seize

Briefly, a warrant authorizes you to seize the items mentioned in it. This includes items that are mentioned individually in the warrant and items that fall within a class of items described in the warrant. Pay careful attention to the description of items in the warrant and be reasonably precise in the selection of items for seizure. In other words, search first and then seize. Do not make a wholesale seizure of material to take back to the office to search through at your leisure. On the other hand, you will not be held to an impossibly high standard of exactitude. An officer

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authorized by the warrant must take ultimate responsibility for the decision on which items to seize.

You may need to address the issue of Solicitor-Client privilege during a search at some point. If Solicitor-Client privilege is claimed, consult Appendix A – Solicitor-Client Privilege, for guidance. If you find any evidence of an offence or an item obtained by or used in the commission of an offence that is not mentioned in the warrant but that you think you should seize, the safest course is to obtain another warrant, particularly if the item could be important to your investigation. However, you may have authority to seize it pursuant to section 489 of the *Criminal Code*. For further guidance, consult Appendix B, Seizure of Items Not Mentioned in the Warrant, for guidance.

Scope of Search

The areas you may search are strictly limited by the wording of the warrant. For example, if the warrant describes "the offices of Peter Construction Company, Suite 1204, Pickett Building", the warrant does not confer any authority to search Suite 1202 across the hall, even if Peter Construction keeps records there. If the warrant authorizes you to search "all the offices occupied by Peter Construction Company in the Pickett Building", you may search both suites. Within the premises described in the warrant, you may search any area in which an item mentioned in the warrant could reasonably be found. If the smallest item mentioned in the warrant is a stolen bicycle, you cannot search for it in a desk drawer.

You are entitled to search in briefcases, purses and other containers on the search premises if an item mentioned in the warrant could reasonably be found there. You may encounter locked rooms or containers in which items mentioned in the warrant could reasonably be found. Seek the cooperation of the occupants in gaining access to such areas if you can; if this is not forthcoming, you are entitled to use reasonable force to break into these areas. If you break into an area, try to minimize the damages. If time and circumstances permit, call in a locksmith.

When you are searching for documents and some other items, it may not be possible to determine at a glance whether a particular item is or is not subject to seizure. In that case, you are entitled to examine the item closely to determine whether or not you have authority to seize it.

If you discover that some of the items mentioned in the warrant are at another location, the safest course is to obtain another warrant for that location. Or, you may ask the occupant of the premises to bring the items to the location you are searching, if you are not worried that this would lead to the destruction of the items. Obtain a valid informed consent if you intend to proceed on this basis. For guidance on what amounts to informed consent consult Appendix C - Consent.

You may be able to rely on section 487.11 of the *Criminal Code* to extend the scope of a search in exigent circumstances as discussed above.

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So, if you decide to take any steps pursuant to section 487.11 which extend the scope of your search, take careful notes of the circumstances relating to your decision.

For information on searching motor vehicles at the search premises, consult Appendix D - *Searching Vehicles*.

Searching Sensitive Areas

When you search certain premises, it is appropriate to exercise particular caution. For example, if you are searching a law office or the premises of a member of the news media, you may be able to determine where the items you are looking for are likely to be found and avoid an intensive search of other areas. If you are searching for business records in a dwelling-house, and you are satisfied that all the records mentioned in the warrant are in the den, you may choose not to search the bedrooms. In making these decisions, you may take into account the possibility of finding incriminating items in unexpected places.

If your search activities might be considered sensitive, (e.g. searching the contents of a safe, a briefcase or a private work area) it is advisable to invite a concerned or responsible person to observe you.

Unauthorized Removal of Material from the Premises

If anyone attempts to remove material from the premises before you have had an opportunity to examine it, tell the individual that you need to search the material. If the individual resists, you may wish to refer to section 129 of the *Criminal Code* which deals with obstruction of a Peace Officer or a Public Officer. If you are neither of these, you may refer to section 139(2) of the *Code* which deals with obstruction of the course of justice.

Damage to Search Premises

Avoid causing unnecessary damage to the search premises. If the occupant expresses an interest in making a claim for any damage caused, tell the occupant how to contact your organization to make a claim.

When to Stop Searching

You are required to stop searching and vacate the search premises if any of the following occurs:

- The warrant expires.
- You have found all the things mentioned in the warrant or have determined that they are not at the search premises.
- You cease to have reasonable grounds to believe that an offence has been committed.

Before Leaving the Search Location

Consider these questions before leaving the search location.

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Did you provide a record of items seized?

It is a good practice to leave an inventory of the items you have seized with a responsible person at the search premises. If you have seized documents, you may provide photocopies of all the documents seized or of any documents urgently required by the occupants, rather than an inventory.

If you have seized a large number of documents, it may be advisable to prepare an inventory on your return to the office and send a copy to a responsible person at the location searched.

Did you check your notes and other records?

Before you leave the search location, check your notes, photographs, and videotapes to ensure that all important information is recorded.

Did you ensure that a copy of the warrant was left at the location?

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FOLLOWING UP AFTER THE SEARCH

Forward Material to Officer in Charge of Investigation

Once you have completed the search, forward copies of all statements, notes and reports to the officer in charge of the investigation as soon as possible.

Report or Return to Justice

If you seize anything under a warrant issued under the *Criminal Code* or under section 487.11 or section 489 of the *Criminal Code* or otherwise in the execution of authorities under the *Criminal Code* or under any other federal statute, you are required to bring the items seized before a justice or make a report on them to a justice as soon as is practicable (unless the *Criminal Code* or some other federal statute provides otherwise). It is best to make your return or report within a week of the seizure.

Check with your legal advisor or supervisor if you expect to take longer than a week. The decision on whether to bring the seized items before the justice or make a report on them will depend on the nature of the items and on the preferences of the justice concerned. You must deal with the justice who issued the warrant, or a justice for the same territorial division. If no warrant was issued, go to a justice having jurisdiction in the matter.

If you make a report, use Form 5.2 of the *Criminal Code*. Use a bilingual form provided by the court or your organization, if one is available. If not, when you draft the report, include the standard portions that would normally be found on a printed form in both English and French if possible. You may fill in the substantive portions of the form in either official language. If necessary, obtain a translation into the other official language to ensure that the justice can understand the entire report. Provide enough information about the items seized to enable the justice to determine whether or not they were validly seized.

If you have executed more than one warrant, complete a separate report for each warrant. Section 489.1 of the *Criminal Code* sets out detailed rules for returning seized items, bringing them before a justice and making reports to a justice. You should review this section carefully. Note that the rules are different for Peace Officers and persons other than Peace Officers. The box below summarizes the initial requirements of section 489.1.

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Section 489.1 Requirements

If you are a Peace Officer and are satisfied that an item is not required for an investigation or legal proceedings and that there is no dispute as to who is lawfully entitled to possession of it:

- return it to the person entitled to possession and get a receipt for it and
- make a report to a justice on what you have done.

If you are a Peace Officer and you want to request authorization to detain an item required for an investigation or legal proceedings, or if there is a dispute as to who is lawfully entitled to possession of it, you can either:

- bring the item before a justice or
- make a report on the item to a justice.

If you are not a Peace Officer you are required either to:

- bring all seized items before a justice or
- make a report on them to a justice.

When anything is brought before a justice or a report on it is made, the justice will make an order under section 490 of the *Code* for it to be returned or detained for an initial period (usually not longer than three months from the date of seizure). If you want to detain an item, be prepared to provide a verbal or written explanation of why it is required.

If you decide to ask a justice to allow you to detain an item for this initial period, it is not necessary to notify the person from whom you seized the item.

If you want to detain a seized item for a longer period of time, you must follow the rules set out in section 490 of the *Criminal Code*.

Depending on the circumstances, the prosecutor, a Peace Officer or the person having custody of a seized item may apply for authority to detain it. In any event, it is advisable to consult your legal advisor before you make a report or return to a justice or request authority to detain a seized item. Note that section 490.1 of the *Criminal Code* makes special provision for perishable items seized pursuant to the *Criminal Code*.

ANNEX A – EXAMPLE OF A SEARCH WARRANT

FORM 5

(Section 487)

WARRANT TO SEARCH

CANADA

Province of

British Columbia

City of Vancouver

To John Doe, Liza Patrick and John Lipofski, all inspectors designated under the *Transportation Safety Act* and the *Transportation Environment Protection Act*, public officers and to a Peace Officer with the Vancouver City Police:

Whereas it appears on the oath of John Doe, of the City of Vancouver in the Province of British Columbia that there are reasonable grounds for believing that the following things:

- records relating to the acquisition, storage, handling and use of Restora and other products containing kinetic acid by Transportor Ltd. between June 1, 2014 and October 31, 2014
- soil and water samples from the lands occupied by Transportor Ltd. described in paragraph 4
- samples of the contents of the two outdoor storage tanks in the northeast corner of the lands occupied by Transportor Ltd.
- records containing the handwriting of identified directors, officers, agents and employees of Transportor Ltd.
- organization charts, telephone lists, memoranda, notes, correspondence, job descriptions, performance evaluations and other records relating to the structure and organization of Transportor Ltd. or to the names, authority and responsibilities of the directors, officers, agents and employees of Transportor Ltd.

will afford evidence with respect to the commission of the following offences:

That Transportor Ltd. and Alice Freeman deposited or permitted the deposit of a deleterious substance, kinetic acid, in a place and under conditions where the deleterious substance may enter water frequented by fish, contrary to section 42 of the Transportation

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Environment Protection Act, on an unknown number of occasions, between June 1, 2014 and October 31, 2014, at or near 2001 Russell Street, in Vancouver, British Columbia

And that the things to be searched for are in the buildings and surrounding lands occupied by Transportor Ltd. at 2001 Russell Street in Vancouver, British Columbia, including all storage tanks and other structures located on those lands, hereinafter called the premises;

This is, therefore, to authorize and require you between the hours of (*as the justice may direct*) to enter into the said premises and to search for the said things and to bring them before me or some other justice.

Dated this 31st day of October A.D. 2015,

at the City of Vancouver,

in the Province of British Columbia

(*Signature of Justice*)

A Justice of the Peace in and for the Province of British Columbia

Appendix A – Solicitor-Client Privilege

Documents in the Possession of a Lawyer

Section 488.1 of the *Criminal Code* sets out detailed procedures to allow lawyers to claim solicitor-client privilege on documents in their possession.

A "lawyer" in this context means an advocate, lawyer or notary in the Province of Quebec and a barrister or solicitor in any other province. The definition includes a lawyer employed as in-house counsel when acting in the capacity of a lawyer.

The section imposes obligations on Peace Officers and Public Officers acting under the authority of the *Criminal Code* or any other federal Act.

If such an officer is about to examine, copy or seize a document in the possession of a lawyer, the lawyer may claim that a client has solicitor-client privilege on the document. The lawyer must provide the name of the client. When a claim is made:

- the officer must seize the document without examining it or making a copy of it, place it in a package and seal and identify the package.
- the officer must place the package in the custody of the sheriff of the district or county in which the seizure is made or in the custody of another specified person if the officer and the lawyer agree in writing that someone else should act as custodian.
- The officer should turn the package over to the custodian within 24 hours of the completion of the search, or if that is not feasible, at the first available opportunity.

Section 488.1 of the *Criminal Code* sets out detailed procedures for resolving claims of privilege, once the documents have been turned over to a custodian. Your supervisor or legal advisor should be able to provide guidance on these procedures.

Affording an Opportunity for Claims of Privilege

Subsection 488.1(8) of the *Criminal Code* provides that no officer shall examine, make copies of or seize any document without affording a reasonable opportunity for a claim of privilege to be made. It is not clear what a "reasonable opportunity" to claim privilege means. It is necessary to balance the client's right to claim privilege, which is seen as an essential element of access to legal advice, and the legitimate needs of law enforcement. If the warrant does not contain detailed provisions, it is preferable to reach an agreement with the lawyer on how the search will be conducted and how claims of privilege will be handled.

If you plan to search a law office, you should consult your legal advisor in advance and devise a plan appropriate to the circumstances. It may be advisable to arrange for an official representative of the bar or your own legal advisor to be present when the warrant is executed.

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What Information is privileged?

Generally, solicitor-client privilege protects communications made in confidence for the purpose of obtaining or providing legal advice. The privilege extends to communications with the lawyer's staff. Generally, the privilege does not protect:

- communications made to facilitate the commission of a crime, whether or not the lawyer is acting in good faith
- material that is not related to the proper provision of legal advice, but is stored with a solicitor to avoid seizure or
- information about transactions involving lawyers' trust accounts.

Although it is useful for officers to have a general idea of the sort of documents in which privilege may exist, the *Criminal Code* does not give officers executing search warrants any authority to decide whether or not a document is privileged. If a lawyer claims privilege, as set out in section 488.1, the officer must follow the sealing procedures set out in the section.

Officers should not argue against a claim of privilege or concede that a document is privileged and therefore desist from seizing it. An officer should, however, desist from seizing a document on which privilege is claimed if the officer decides, on reflection, that the document is not mentioned in the warrant or otherwise subject to seizure.

Documents Not in the Possession of a Lawyer

You may encounter a claim of privilege on a document that is not in the possession of a lawyer. In that case, section 488.1 of the *Criminal Code* does not apply. Certain statutes, such as the *Competition Act*, contain special provisions that govern claims of privilege on documents that are not in the possession of a lawyer. You must comply with these provisions when applicable. Otherwise, if someone claims privilege on a document that is not in the possession of a lawyer, you may seize it, provided that the document is mentioned in the warrant or otherwise subject to seizure.

You are not expected to adjudicate claims of privilege while executing search warrants. The claimant may still be able to pursue the claim in another forum, for example, if any attempt is made to have the document admitted into evidence.

Appendix B - Seizure of Items Not Mentioned in the Warrant

A warrant authorizes you to seize the items mentioned in it. This includes items that are mentioned individually in the warrant and items that fall within a class of items described in the warrant. While you are executing a warrant you may find evidence of an offence or an item obtained by or used in the commission of an offence that is not mentioned in the warrant, but that you think you should seize. The safest course, particularly if the item could be important to your investigation, is to obtain another warrant. However, you may have authority to seize the item pursuant to section 489 of the *Criminal Code*, under the doctrine of plain view or on consent.

Under subsection 489(1) of the *Criminal Code*, every person executing a warrant may seize in addition to the things mentioned in the warrant any thing that the person believes on reasonable grounds:

- has been obtained by the commission of an offence against the *Criminal Code* or any other federal statute
- has been used in the commission of an offence against the *Criminal Code* or any other federal statute or
- will afford evidence in respect of an offence against the *Criminal Code* or any other federal statute.

Under subsection 489(2) of the *Criminal Code*, every Peace Officer, and every Public Officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of the *Criminal Code* or any other federal statute, who is lawfully present in a place pursuant to a warrant or otherwise in the execution of duties may, without a warrant, seize any thing that the officer believes on reasonable grounds:

- has been obtained by the commission of an offence against the *Criminal Code* or any other federal statute
- has been used in the commission of an offence against the *Criminal Code* or any other federal statute or
- will afford evidence in respect of an offence against the *Criminal Code* or any other federal statute.

Note that section 489 only authorizes officers to seize items that meet the criteria set out. It does not authorize officers to search for anything. You must have some other independent authority to conduct a search. You cannot use a warrant with a limited scope as a pretext to conduct a broader search and then rely on section 489 to seize any additional items found. If it appears that if you are executing a warrant within the meaning of subsection 489(1) or meet the requirements set by subsection 489(2), you may seize an item pursuant to section 489 even if the offence to which the item relates falls outside your normal mandate. However, if you encounter an item that relates to an offence outside your normal mandate or area of expertise, you should be extremely careful in assessing the validity of the reasonable grounds to believe

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that you must have in order to make a seizure under section 489. If possible, you should refer any item relating to an offence beyond your mandate that you find to a Peace Officer with general jurisdiction. If there is no Peace Officer with general jurisdiction available, it is preferable not to rely on section 489 to seize an item beyond your mandate unless the offence is serious and you are satisfied that the item is likely to be removed or destroyed if you do not seize it immediately. You can instead, make note of the item and the circumstances and pass the information on to a Peace Officer who can take appropriate action.

If it is not appropriate to rely on section 489 of the *Criminal Code* to seize an item not mentioned in the warrant, you may be able to rely on the common law doctrine of "plain view". You may have authority to seize an item under this doctrine if:

- you reasonably believe that the item is evidence of the commission of an offence or contraband;
- you locate the item and realize that it constitutes evidence or contraband while executing a warrant; and
- you find the item inadvertently. In this context, "inadvertently" means that you are not conducting the authorized search as a pretext to look for and then seize other items on the basis of plain view.

As with section 489 of the *Criminal Code*, if you find an item relating to an offence outside your mandate, and there is a Peace Officer with general jurisdiction at the search location, refer the item to the Peace Officer. If there is no officer with general jurisdiction available, do not rely on the doctrine of plain view unless the offence is serious and you are satisfied that the item is likely to be removed or destroyed if you do not seize it immediately.

There is a legal presumption that warrantless seizures are unreasonable. A seizure pursuant to section 489 or the doctrine of plain view is a warrantless seizure. If you seize an item pursuant to section 489 or the doctrine of plain view and the seizure is challenged, the Crown will have to prove that you acted reasonably in making the seizure without a warrant. So, if you decide to seize anything pursuant to section 489 or the doctrine of plain view, take careful notes of the circumstances relating to your decision.

Appendix C – Consent

When you rely on consent from the person affected to justify an enforcement action that, under normal conditions, requires court authorization or which would violate a Charter right, you must ensure that the consent is valid and fully informed. Do not proceed on the basis of consent unless you are satisfied that the person giving consent:

- has the authority to do so (e.g. a member of the cleaning staff in an apartment building cannot consent to the search of a tenant's personal effects).
- is competent (e.g. a person who is intoxicated cannot give a valid consent).
- has not been directly or indirectly induced, threatened, intimidated or manipulated to give consent by you or by anyone else acting as an agent of the state.
- is aware of your position as a law officer.
- has been given all requisite right to counsel and right to silence warnings and a reasonable opportunity to consult counsel when appropriate.
- is aware of the nature of the conduct for which you are seeking consent.
- is aware that consent can be refused, and if given, can be withdrawn at any time.
- is fully aware of the rights at issue and of the potential consequences of giving consent (e.g. the person knows you do not have a search warrant and knows that if you proceed with a search on consent, anything seized may be used to prove the offence in question).
- is generally aware of all the offences you are investigating (e.g. if you seek consent to obtain a blood sample from a suspect and you intend to use the sample in the investigations of two different offences, make sure the person knows you are investigating both offences).

Normally, you should explain all the factors discussed above to the person giving consent. If the person has consulted a lawyer, it might be considered reasonable for you to assume that the lawyer has covered these issues. Still, the safest course, to ensure that the consent is valid, is to explain these matters yourself.

If all these conditions are satisfied, consent may be given expressly or by implication. The safest course is to obtain written consent. In any event, be sure to take notes.

Note that there are special requirements to obtain a valid waiver of certain rights from a young person. See the references to the *Young Offenders Act*.

Appendix D - Searching Vehicles

You may search a vehicle at the search location under the authority of a warrant if:

- an item mentioned in the warrant could reasonably be found in the vehicle, and
- the vehicle is specifically mentioned in the warrant or comes within the description of the premises to be searched in the warrant.

If your warrant refers to all the premises of Liza's Take Out at 1967 Spruce Street and there is a truck in a garage at that address, a court would probably hold that the vehicle comes within the description of the premises to be searched. On the other hand, if the warrant refers to Apartment 403, at 1234 Bank Street, Anytown, occupied by Gary Green, a court might well hold that the warrant does not authorize you to search a vehicle owned by Green that is parked across the street from the apartment building.

If you have reasonable grounds to search a vehicle, but you are not sure you have authority to search it under your warrant, normally the safest course is to apply for another warrant. If it would be impracticable to apply for another warrant because of exigent circumstances, you may have authority to search the vehicle pursuant to section 487.11 of the *Criminal Code*.

Section 487.11 of the *Criminal Code* provides that Peace Officers, or Public Officers who have been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of the *Criminal Code* or any other federal statute, may, in the course of their duties, exercise any of the powers described in subsection 487(1) of the *Criminal Code* without a warrant if the conditions for obtaining a warrant exist but it would be impracticable to obtain a warrant because of exigent circumstances. (See above for discussion of Exigent Circumstances)

If you are an officer with a limited mandate, you should not rely on section 487.11 of the *Criminal Code* as authority to search a vehicle for evidence of offences outside your mandate, even in exigent circumstances. For example, if you have been designated as an officer to enforce the *Excise Act*, you should not rely on section 487.11 of the *Criminal Code* to search a vehicle for evidence of an offence against the *Meat Inspection Act*, even in exigent circumstances.

Some officers also have authority to stop or search vehicles under other legislative provisions. If you have such authority, be sure to comply with the terms of the provision. If you have limited authority to stop or search a vehicle for a specific purpose, do not use this authority as a pretext to conduct a search of the vehicle without legitimate authority to do so. If you are unsure whether you have authority to search a vehicle, check with your supervisor or legal Advisor.

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TITLE

Standard on Collection, Preservation and Control of Evidence and Property

SUBJECT

Transport Canada (TC) enforcement practices sometimes require enforcement officers to seek warrants or orders to conduct searches, or require the production of documents from Third Parties. Such warrants and orders may result in the seizure of property from the search or the production order. This chapter deals with the methods of collection, preservation and control of the evidence and property thus seized.

PURPOSE AND SCOPE

This standard provides the direction to TC officers on how to collect, preserve and control evidence and property, in accordance with applicable legislation.

POLICY STATEMENT

It is the policy of TC that its personnel, when collecting, preserving and controlling evidence and property will do so in accordance with the legislative authorities and in accordance with the direction contained in this document.

POLICY REQUIREMENTS/GUIDELINES

This standard sets out the requirements for the collection, preservation and control of evidence and property regardless of the manner in which it was seized. The Centre of Enforcement Expertise (The “Centre”) must be consulted for advice and support in preparing the necessary documents (i.e. Form 5.2 *Criminal Code*). These documents must be prepared in accordance with this chapter by appropriately trained enforcement officers.

In addition, the drafting of court documents is often influenced by local practices in place in each jurisdiction and sometimes at the level of the judicial district. Always ensure the process followed is that acceptable in your jurisdiction, which may, in some cases, differ from this policy.

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IMPORTANT CONCEPTS

The following principles apply to all aspects of the collection, preservation and control of evidence and property.

- From the first point of seizure, maintain and document continuity of possession of the evidence.
- Handle evidence appropriately, in accordance with all lawful requirements; call on experts, if necessary.

Maintain and Document Continuity of Possession of the Evidence

At a trial, the Crown may be required to show when, where and how each item of evidence was obtained and how it was handled from the time it was obtained to the time it is introduced as evidence. This process helps the court determine whether the item was originally connected to the offence charged and whether there has been any change in the condition of the item since it was obtained that would diminish its relevance. All the people who handled an item of evidence during this period may be called on to account for how they handled it, and thus, establish continuity of possession of the evidence. To simplify this accounting, only those people who definitely need to should handle evidence from the time it is obtained until it is presented in court. This will limit the number of people who will have to account for the evidence, should a case proceed to trial.

Everyone who forms a link in the chain of possession of evidence should follow the guidelines below so that the Crown will be able to demonstrate continuity of possession.

Recording How Evidence is Handled

Keep an accurate record of the evidence you handle. It is important to record this information in a timely fashion. Keep a record of:

- how, when and where you obtain evidence;
- the condition of the evidence when you obtain it, if noteworthy;
- how the evidence is handled, e.g. details of storage, shipment and tests performed;
- any changes in the condition of the evidence; and
- how, when and where you pass on or dispose of the evidence.

Your notes can be brief, so long as they are accurate and contain all the information required.

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Accounting for Evidence When it is Out of Sight

If you are responsible for evidence, lock it up or seal it and put it in a secure place when it is out of your sight, to ensure that no one disturbs it. You will find some guidance on the storage of evidence later in this document.

Continuity of Possession of Evidence During Transfer

When you transfer evidence to other persons, take the precautions outlined later in this Statement to ensure that continuity of possession is maintained.

Ensure that persons receiving evidence from you know that they:

- should check its condition on receipt;
- are responsible for it while it is in their care;
- are not to alter the evidence in any way unless instructed to do so (for example, to conduct a chemical analysis); and
- should keep accurate notes so they will be able to render a complete accounting for it during the period it is in their possession.

Handle Evidence Properly and Engage Experts

Handle evidence properly and call on an expert if you do not have adequate training to deal with it. Proper handling is essential when dealing with dangerous evidence, for your own protection and for the protection of the public. Proper handling is also important to ensure that the evidence will be admissible and given its due weight in legal proceedings. For example, an untrained officer might accidentally contaminate a sample of a chemical taken for analysis and destroy its evidentiary value. Proper handling also reduces the risk of civil liability for damage to or loss of evidence.

Normally, you should maintain evidence in the exact condition it was in when you obtained it. However, at times evidence is changed intentionally, e.g. a portion is used up in chemical analysis.

Other times, evidence is changed unintentionally, e.g. a piece of glass is broken in transit. Document any change in the condition of evidence that occurs while it is in your possession, whether the change is intentional or unintentional.

Follow these practices when you handle evidence:

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- Protect evidence from contamination and deterioration.
- Use suitable instruments and containers.
- Wear gloves and other protective gear when appropriate.
- Take special care with fragile and perishable evidence.
 - Package, transport and store evidence safely and securely. For situations where the amount of evidence seized is very large or the actual piece(s) of evidence are too large for storage locally, the Centre can assist in making arrangements to provide this service for specific cases/needs.

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STEPS IN THE IDENTIFICATION AND HANDLING OF PHYSICAL AND DOCUMENTARY EVIDENCE

The basic steps in identifying and handling physical and documentary evidence are set out and discussed in further detail below.

- Safeguard the scene
- Recognize the evidence
- Photograph or videotape the evidence
- Collect the evidence
- Mark the evidence and record essential information
- Package the evidence
- Take precautions when shipping or transmitting evidence
- Store evidence safely in an area with controlled access
- Follow appropriate lab procedures
- Comply with notice requirements
- Return or dispose of evidence properly when the case is closed

These steps are generally applicable to both documentary and physical evidence. Appendix I contains some specific guidance for documentary evidence. Circumstances may dictate that you switch the order of the various steps. Note that some steps may not apply to your particular investigation.

Safeguard the Scene

See *Chapter 2.7.5* on executing a search warrant for guidance on securing the search premises when you are executing a search warrant.

When you arrive at the scene of a serious incident to conduct an investigation and believe that it is necessary to take measures to safeguard evidence, you may take reasonable steps to secure the area and to prevent unauthorized intrusions. Secure the focal point first, then extend the area of protection outwards to safeguard evidence that may be found in the vicinity. If it is reasonable to do so, you may limit the number of persons with access to the secured area. Do not attempt to exclude persons who have a right to be present.

Before you touch anything, observe and record what you see, if practicable.

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It is preferable to examine and photograph evidence and record essential information before moving it. Until this is completed, protect evidence from contamination and deterioration by covering it, rather than moving it, if practicable.

Do not remove any item from the scene without permission from the officer-in-charge.

Safeguard the scene until all objects, residues, impressions and traces of evidential value have been located, photographed, collected, marked, recorded and packaged.

If you foresee being at the scene for a long time, choose an area close by, but not in a critical area, and designate it as a collection point for materials and as a meeting place for official personnel. This will greatly reduce the risk that the scene will be contaminated.

Recognize the Evidence

Conduct a planned and methodical search for evidence. Nothing is too insignificant for your attention. The following checklist provides tips on what to look for when collecting physical or documentary evidence.

What to Look For

- anything that may be relevant to the matter under investigation
- inculpatory and exculpatory evidence
- objects that appear out of place
- objects or files that you would expect to see and do not
- evidence of acts similar to those under investigation. Such evidence might indicate who committed the offence or rebut a purported defence such as accident or lack of intention.
- transient (temporary) evidence that cannot be collected. For example, note whether doors and windows are open or closed and whether there is any odor in the room. Record this information.
- impression evidence, such as footprints
- trace evidence such as marks, stains, liquids, hairs, fingerprints, etc. Closely examine objects at the scene as well as the floor, walls, and ceiling. Remember that there may be fingerprints on documents

Photograph or Digitally Record the Evidence

Photograph or digitally record the evidence and the scene, if it will further the investigation. Your organization may assign an expert to do this or it may be an aspect of your own duties. If you are called on to act in this capacity, see the guidance below.

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Guidelines for Photographing or Digital Recording of Evidence

If possible, photograph or digitally record all items of physical evidence in their original position, before they are disturbed in any way.

Scale and Perspective

It is useful to take:

- distance shots to show the relationship of items of evidence to other objects and to the scene itself.
- close-up shots to define the details of each item of evidence. Use a ruler or some other object in the shot to provide scale.
- shots to show the perspective of witnesses.

Notetaking

Make note of each picture taken. Identify the object or the scene, the position of the camera, the distance of the camera from the object, the type of camera and digital format used, the length of recording, the lighting conditions, the time of day and the date. Make notes about any subsequent formatting or editing of the recording. .

Administrative Measures

Date and initial all photographs and recordings.

Make a copy of any recordings and photographs to be used for further investigative work. Retain the originals for use in legal proceedings. Retain original recording to ensure continuity. If a photo or digital recording is used to depict an original scene or object, a witness is usually required to attest to the accuracy of the picture's representation. However, a witness may not be necessary if the camera used does not require an operator.

Return of Stolen Property

In cases of theft, robbery, break and enter, possession of property obtained by crime, false pretenses, false statement or fraud, check the provisions relating to photographs in section 491.2 of the *Criminal Code*. Under this section, photographs, films or digital recordings of property taken by a peace officer or a person acting under the direction of a Peace Officer may be admitted in evidence. This allows stolen property to be returned to its owner more promptly in some cases.

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Collect the Evidence

If feasible, designate one officer to collect all evidence at a particular location and arrange for experts to collect evidence that requires special handling or testing. Have these same people transport the evidence after it is collected. Only those people who definitely need to should handle evidence from the time it is obtained until it is presented in court. These measures shorten the chain of possession and help ensure that evidence is collected properly. They limit the number of people who will have to account for evidence, should a case proceed to trial.

For example, when a sample is being produced as evidence, anyone who:

- took or labelled the sample,
- handled or stored the sample or transported it to the lab,
- accepted it at the lab,
- analysed it,
- stored it or had possession of it before the proceeding,
- can be called as a witness.

Process first any evidence that may deteriorate on account of the weather or the passage of time, that can easily be destroyed or that is located in a critical area. If an object is too big to move, consider detaching the part that is most useful as evidence.

It is better to err in the direction of collecting too many, rather than too few, samples. Take sufficient quantities for lab examination and for use in legal proceedings, taking into account that a portion of the sample may be consumed in the process of chemical analysis. It is a good practice, whenever possible, to have sufficient samples available so that one can be given to the defence to permit their own private testing.

Collect known standards for comparison purposes. For example, if you find an unsigned handwritten note and three signed documents that you think might match the unidentified handwriting, collect all the documents for expert analysis.

Mark the Evidence and Record Essential Information

Depending on the type of evidence, this step may be completed either before or after packaging evidence.

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Mark the Evidence

When you obtain a piece of evidence, as a general rule, you should "mark" it so that you will be able to identify it in the future. Your mark should be permanent and easily recognizable. Many investigators use their initials or identification number.

Put your mark on the item itself or on a tag or label that is firmly attached to it. Do not make your mark directly on the item if this is likely to damage it or reduce its evidentiary value. When physical evidence is introduced in court, the person who collected the evidence normally identifies it and reports the circumstances of its collection and custody. Proper marking and recording of evidence facilitates this process.

You need not mark a piece of evidence if it has already been given a distinctive identification number or symbol which will enable you to identify it in court.

Record Essential Information

You also need to record essential information about the evidence you handle. You may do this in your notes, on the evidence or on its tag or label, or on receipts or other forms. Make charts and diagrams if they will help. You should record:

- how you obtained the item;
- where you obtained the item;
- the date you obtained the item and the time, if relevant;
- the condition of the item when obtained, if noteworthy (e.g., a vase was broken in three pieces, a handwritten note was attached to a competitor's price list or containers holding dangerous chemicals were precariously stacked);
- how you handled the item while in your possession (e.g. details of storage, shipment and tests performed);
- any changes in the condition of the item while in your possession;
- how you passed on or disposed of the item.

Take extra care to note information about evidence that is too large to take away or that is transient and cannot be collected. If it would be useful, take a photograph or recording or make a sketch.

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Marking and Recording Multiple Pieces of Evidence

If you obtain several pieces of similar evidence (e.g. several boxes of parts from the same location) it may be sufficient to place them in a container and mark the container, so long as they are kept together, instead of marking individual items. Record a description of all the items, even if they are not marked individually. However, if you think it may be important to show where a particular item came from, assign an identification number to each item in the group. Then, record additional information about the group of items with a cross-reference to the identification numbers assigned to the individual items. For example, if you seize several documents from a single location, you might give each page an identification number and write in your notes, "Seized documents AXYL 123-260, desk drawer, office of E. Magnussen, 97 01 21, 14:15."

List of Exhibits

Make a complete list of exhibits to forward to the Crown, preferably in the form of a chart showing what was obtained and who obtained it.

Package the Evidence

Depending on the type of evidence, this step may be completed either before or after marking the evidence. The packaging of evidence will be dictated by the nature of the item.

If you obtain evidence when you are without your evidence kit or proper containers, improvise to collect and package it with what is available, keeping in mind the risk of contamination and deterioration. Describe the steps you take with the evidence in your notes. The list that follows provides some tips for packaging evidence.

Tips for Packaging Evidence

- Use clean instruments and containers and wear gloves if appropriate.
- Use durable containers of an appropriate size.
- Wrap items of evidence individually; use separate containers for different samples of fragmentary evidence.
- Package fragile objects in reinforced containers or in soft materials. Mark "Fragile" on the package.
- Package perishable objects in appropriate containers to reduce spoilage and evaporation.
- Put dangerous materials (e.g. explosive or flammable) in appropriate containers. Mark with the appropriate warning.

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- Fasten any object to be examined for fingerprints to the container so it will not shift, rub, or come into contact with any other object that might damage the prints.

Take Precautions when Shipping or Transmitting Evidence

When it is necessary to transfer evidence to another person or move it to another location, personal delivery by the person already in possession of the evidence is the best practice. However, you may use double registered mail or another secure method of shipment, or a secure method of transmission such as a locked depository box, without compromising continuity of possession. Seal the evidence and be sure that it is adequately identified. Ensure that the package is locked or securely fastened. If the evidence is in a locked box, it is advisable to send the keys separately by registered mail or courier. Retain original bills of lading and other shipping documents. Take similar precautions when shipping evidence to yourself at another location.

Contact the recipient to arrange for pick-up or receipt. Tell the recipient how the evidence is sealed and marked. This way, the recipient can determine whether the evidence has been disturbed. Similarly, when you receive evidence, check it carefully to determine whether it appears to have been disturbed.

Store Evidence Safely in an Area with Controlled Access

When evidence is out of your sight, take precautions to ensure that it is not disturbed. It is best to store it in a locked area with limited access. If no locked facilities are available, you may seal the evidence securely in a container, if you are satisfied that it will be secure.

When you lock evidence up, it is best if you are the only person to have the keys or know the combination. If you are aware of others who know the combination or have a set of keys, note their names. When you seal evidence, do it so that the container cannot be opened without breaking the seal. When you resume physical possession, check the lock or seal and the condition of the evidence. Be sure to keep accurate notes on the steps you take. This way, you can account for evidence even while it is out of your sight.

If your organization has an evidence clerk, turn over all evidence to the clerk as soon as possible.

In cases where investigators do not have ready access to evidence storage facilities, contact the Centre of Enforcement Expertise for assistance.

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Follow Appropriate Lab Procedures

Follow the procedures of the particular lab you use when you submit evidence for analysis.

Comply with Notice Requirements

Be sure to arrange for timely service of any notice that may be required to introduce an item as evidence in legal proceedings. It is often necessary to notify the accused a week or more in advance, particularly for documentary evidence. Check with Crown counsel on the applicability of any notice requirements several weeks before the commencement of legal proceedings against the accused.

Return or Dispose of Evidence Properly when the Case is Closed

Return or dispose of evidence as ordered by the court or as directed by legislation. Make appropriate notes on the return, destruction or other disposition of any evidence when the case is closed. Do not destroy evidence without proper authorization. Do not destroy it before the expiration of any applicable appeal period. If you destroy evidence, do so in the presence of another officer.

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CRIMINAL CODE - SEIZED PROPERTY PROCEDURES

The *Criminal Code* requires judicial control over property seized during the course of any summary conviction offence investigation. In each province, there are also provincial Summary Convictions Offences Acts that contain procedures that parallel the *Criminal Code* providing for judicial control over property seized during investigations of offences contrary to any provincial statute. Additionally, there are a limited number of federal regulations specific to the seizure of items during inspections and investigations that apply to TC enforcement officers. Where property is seized pursuant to an investigation that is conducted with a view to a summary conviction offence being laid, then evidence should be seized pursuant to the *Criminal Code* provisions. Where property is obtained during the course of an inspection or investigation that is not conducted with a view to a summary conviction offence being laid, the specific provisions governing production and receipt of information and items from those being “investigated” should be consulted. Each TC statute contains specific sections addressing the production of such items by those being investigated. For further information on the specific sections requiring those being inspected to assist, or produce information for enforcement officers, please see *Chapter 2.7.3, Annex A Legislative Requirements for Assistance*.

Included as an Annex to this chapter is a specific example of such a provision addressing the seizure of aircraft pursuant to the *Aeronautics Act*. This is a unique provision imposing certain additional obligations.

An officer's duties regarding things that have been seized (with or without warrant) are contained in Sections 489.1 and 490 of the *Criminal Code*. The officer must bring the thing seized before the issuing justice or file a report in form 5.2 describing precisely what has been seized.

Under Section 490(1), the officer may apply for an order that the thing seized be detained if the officer establishes that this is necessary for an investigation, preliminary hearing, trial or other proceeding. This initial detention order lasts for three months.

If no charges have been laid after three months, the officer may apply to a justice for an extension of the time during which the thing seized is to be detained. Notice of the application must be given to the person from whom the thing was seized. A justice may grant extensions of the time for which the thing seized may be detained up to a maximum total of one year. After one year has transpired and no charges have been sworn, the officer must apply before a Supreme Court judge for an order that there be a further detention of the thing seized. To get

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such an order, the officer or prosecutor must establish that the detention is necessary because of the complexity of the investigation.

All processes are similar and follow the general approach required under the *Criminal Code*.

Seized Property

When any property is seized by an officer, that officer is responsible for the safekeeping of the property. No property in the custody of the officer shall be returned to the person from whom it was seized unless an Order to Return Things Seized, signed by a Justice of the Peace, has been obtained by the officer.

All property must be held by the officer 31 days from the date any Order is issued by a Justice as per the *Criminal Code*. This provides 31 days for any appeals or disputes in relation to the disposition of the property. After 31 days, if no appeals or disputes are received by the officer, the property shall be dealt with as stated in the Order.

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Annex A TC Legislation regarding seizure and return of property

Division V — Preservation and Return of Evidence or Aircraft

Preservation and Return of Evidence

103.09 Where the Minister seizes anything pursuant to paragraph 8.7(1)(c) of the Act, the Minister shall

- (a) mark it in a clearly identifiable manner;
- (b) take reasonable care to preserve it until it is required to be produced as evidence; and
- (c) return it to the person from whom it was seized within 90 days after the seizure, where
 - (i) there is no dispute as to who is lawfully entitled to possession of the thing seized,
 - (ii) the return is not likely to affect aviation safety, and
 - (iii) the continued detention of the thing seized is not required for the purposes of an investigation, hearing or other similar proceeding.

8.7 (1) Subject to subsection (4), the Minister may

- (a) enter, for the purposes of making inspections or audits relating to the enforcement of this Part, any aircraft, aerodrome or other aviation facility, any premises used for the design, manufacture, distribution, maintenance or installation of aeronautical products or any premises used by the Canadian Air Transport Security Authority, regardless of whether or not the inspection or audit relates to that place or to the person who possesses or controls it;
- (a.1) remove any document or other thing from the place where the inspection or audit is being carried out for examination or, in the case of a document, copying;
- (b) enter any place for the purposes of an investigation of matters concerning aviation safety;
- (c) seize anything found in any place referred to in paragraph (a) or (b) that the Minister believes on reasonable grounds will afford evidence with respect to an offence under this Part or the causes or contributing factors pertaining to an investigation referred to in paragraph (b); and
- (d) detain any aircraft that the Minister believes on reasonable grounds is unsafe or is likely to be operated in an unsafe manner and take reasonable steps to ensure its continued detention.

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TITLE

Standard on Preparation of Case Reports

SUBJECT

Case Reports are also known as Court Briefs, Crown Briefs, Reports to Crown Counsel. They are the fundamental tool used by enforcement personnel to collect, in a single document, all relevant enforcement material in a systematic way. They provide the basis for a recommendation as to the appropriate enforcement option and when recommending proceeding by way of summary conviction they are used to transmit the case-related information to Crown Counsel at the Public Prosecution Service of Canada (PPSC). The information contained in the Case Report assists all parties in determining the direction of the enforcement actions.

PURPOSE AND SCOPE

This standard applies to all Transport Canada (TC) inspection, investigation and enforcement personnel. The purpose of this is to assist TC personnel in successfully completing a Case Report.

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2.8 Standard on Preparation of Case Reports

A Case Report is a comprehensive tool that supports enforcement actions taken by TC. The greater the potential penalty, the more important the Case Report be completed in its entirety. It is recognized that, depending on the seriousness of the offence, certain elements may not be required.

A Case Report is required in the following circumstances:

- Where the risk assessment arising from any inspection or investigation results in an assessment of moderate or high, even where no enforcement action is contemplated as the Case Report is the documentary basis for determining if an enforcement action will be taken; or
- Where, following any risk assessment, an officer proposes an Administrative Monetary Penalty, a summary conviction offence, or proceeding by way of indictment as the manner of responding to non-compliance.

POLICY STATEMENT

It is the policy of TC that Case Reports are prepared whenever a risk assessment results in a finding of moderate or high or where, following a risk assessment, the recommended enforcement action includes an Administrative Monetary Penalty or proceeding by way of summary conviction or by indictment.

POLICY REQUIREMENTS/GUIDELINES

GENERAL

1. Reports to Crown Counsel should be prepared in collaboration with the Crown Counsel and made available as far in advance as possible before the laying of the charges. The officer will contact the Crown to determine when the report is required and whether there are any specific formats or standards that may apply for their preparation.
2. Reports to Crown Counsel may contain and/or reference the following, for which a recommended Table of Contents has been provided in Annex A, which regroups these elements into a coherent structure:
 - a. a prosecutor's information sheet, containing an overview of the incident;
 - b. a brief discussion of the purpose of the legislation;
 - c. a chronological account or summary of the events;

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- d. alerts (anything time sensitive such as limitation periods, expiration of time for detention of seized items);
- e. theory of the case/why prosecution is necessary (administrative remedies, anticipated defenses, rationale for prosecution);
- f. profile of the accused (corporate name search, identification information, compliance history);
- g. list of civilian witnesses containing their full names, as well as Transport Canada witnesses and experts witnesses if relevant;
- h. an outline of the evidence, both testimonial and physical, that each witness can provide; (witness sheet; "Can say")
- i. laboratory reports;
- j. photographs, drawings or sketches of the scene, if necessary;
- k. court documentation such as information, summons and subpoenas;
- l. administrative measures / external correspondences (warning letters, directions,);
- m. list of things seized;
- n. any correspondence;
- o. copies of all evidence should be included in the file. All file contents will be subject to disclosure to the defense;
- p. sentence recommendations;
- q. prior convictions and criminal records;
- r. anything else that will help the Crown understand the case; and
- s. other issues (internal investigations, disciplinary actions against a witness, availability of witnesses, suspected violations of the *Canadian Charter of Rights and Freedoms*, difficult witnesses, tainted evidence, etc.).

ROLES AND RESPONSIBILITIES

Officers

3. Enforcement personnel will prepare a Case Report in consultation with all necessary parties and in sufficient detail to substantiate the exercise of discretion by the officer to recommend an enforcement action for the matter under investigation. It is an advisable practice to work directly with Legal Services Counsel and the Centre at this stage to guide the

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preparation of the Case Report to anticipate and respond to questions that might be posed by Crown Counsel (PPSC). This consultation may also include consultation, with Crown Counsel, the responsible manager or other investigators or subject matter experts.

Managers

4. Managers are responsible for reviewing the Case Report before it is sent to Crown Counsel, however it must be borne in mind that once a decision has been made to proceed with recommending a charge, that the Case Report is the responsibility of the investigating officer, not the manager. This is done to ensure the integrity of the investigation by limiting access to only those with a true “need to know” within the Department.

5. Where Managers receive a Case Report, they will provide a copy to the Centre of Enforcement Expertise for review.

PROCEDURES

GENERAL

Case Report Preparation

6. As officers prepare Case Reports and where it is recommended that the matter be proceeded with by either an Administrative Monetary Penalty or by way of Summary Conviction they should refer to the “Preparation of a Report to Crown Counsel” by the Public Prosecution Service of Canada (PPSC) located in Annex A and complete the full Report to Crown Counsel Report as indicated in that guidance.

7. When officers determine that the matter will be proceeded with by other than an Administrative Monetary Penalty or by way of Summary Conviction they shall complete a Case Report with sufficient detail to substantiate their decision to proceed by other than Administrative Monetary Penalty or Summary Conviction consistent with the guidance found in *Chapter 2.6* of this Desk Book.

E-Briefs

8. Electronic court briefs, also known as “E-Briefs”, are another format to create a Case Report.

9. Before preparing an E-Brief, verify that the Crown Counsel in the jurisdiction permits the use of E-Briefs.

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2.8 Standard on Preparation of Case Reports

ANNEX A

The following is an example of a Report to Crown Counsel. As each case is different, this is meant to be a guide only. Examples of existing Case Reports are provided as guidance.

COURT BRIEF - SAMPLE

File #: XXXX-XXXX-XX-XX-XXX

R. v. [Insert name of alleged offender]

Charge: *[Insert name of Act]*
[Insert subsection of Act]

Draft Date: *[Insert date]*

Brief Prepared By: *[Insert name, title and region of the officer]*

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Chapter II Legal Processes, Practices and Standards 2.8.1 Standard on Disclosure of Officer Misconduct

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TITLE

Standard on Disclosure of Officer Misconduct

SUBJECT

The Supreme Court of Canada decision in R v. McNeil [2009] S.C.J. No 3 (January 19, 2009) affirms the obligations of the police and others engaged in enforcement and the Crown to disclose to the accused persons of findings of serious misconduct by officers where the misconduct is either related to the investigation or the finding of misconduct could reasonably impact on the case against the accused person.

In accordance with the Court decision, Transport Canada recognizes the obligation to provide the Crown Counsel with records relating to findings of serious misconduct by officers who may be called as witnesses or who are involved in the investigation against the accused where (1) the misconduct is either related to the investigation or (2) the finding of misconduct could affect the credibility of the officer as a witness in the case against the accused. The onus is on any officer involved in an investigation or who is identified as a potential witness to make the Crown Counsel aware, in writing, of findings or allegations of serious misconduct covered by this standard.

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Legal Processes, Practices and Standards

2.8.1 Standard on Disclosure of Officer Misconduct

Crown Counsel has the responsibility to review the information provided, determine the relevance of the misconduct to the case at hand and whether it must be disclosed.

Screening factors used by the Crown Counsel will include:

- a. the officer's role in the investigation;
- b. relevance of material: does it relate to the investigation of the accused, or could it reasonably impact the case against the accused? and
- c. is the material privileged?

PURPOSE AND SCOPE

The purpose of this standard is to set out a process for officers to follow when assisting Crown Counsel with the obligation to disclose to an accused all records of serious misconduct by officers that are relevant to the investigation of the accused. This standard and process will ensure that TC officers are aware of the Crown Counsel's obligation to provide all information that is in the possession of the Department, including findings of serious misconduct by an officer, and is relevant to the investigation for disclosure purposes.

This standard provides detailed information as to what a McNeil Report is to contain. In addition, there are some other types of information which are not "fruits of the investigation" and as such fall outside the common law regime of disclosure under Stinchcombe and McNeil. For production of these types of information the Crown Counsel will require the accused to make a specific application to the Court. Such information includes disciplinary records that are clearly irrelevant to the case against the accused.

POLICY STATEMENT

It is the policy of Transport Canada, to fulfill its obligation to disclose records relating to findings of serious misconduct by officers who may be called as witnesses or who are involved in the investigation.

POLICY REQUIREMENTS/GUIDELINES

GENERAL DISCLOSURE

1. Transport Canada's officers have the duty to forward all material pertaining to the investigation of an accused to the Crown Counsel. The Crown Counsel has a duty to disclose to an accused all relevant information in its possession or control related to those matters the Crown intends to adduce in evidence against the accused, but also any information in respect of

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which there is a reasonable possibility that it may assist the accused in the exercise of the right to make full answer and defense.

2. The investigation material contained in the package sent to the Crown Counsel must contain all information whether inculpatory or exculpatory and includes not only the material the Crown intends to use as evidence, but also any information that there is a reasonable possibility which may assist the accused in the exercise of the right to full answer and defense including the right to test the credibility and reliability of the witness.

3. Transport Canada will disclose to the Crown Counsel any material or information in its possession or control that is even remotely relevant to the prosecution of a case, including findings of serious misconduct related to the investigation, and findings of serious misconduct that could reasonably have an impact on the case against the accused.

Witness

4. The following officers may likely be witnesses and therefore will be required to submit a McNeil Report:

- a. Transport Canada officers involved in the case, namely:
 - i. seizing officers;
 - ii. officers involved in executing a search;
 - iii. officers who actively provided assistance.
- b. investigating officer (and other investigators involved).

Misconduct

5. The McNeil decision imposes a legal duty on the Crown to disclose to the accused all serious misconduct by an officer where the misconduct is either related to the investigation or the finding of misconduct could reasonably impact on the case against the accused.

6. The Supreme Court of Canada has qualified the misconduct which would trigger the requirement for disclosure as "findings of serious misconduct by officers involved in the investigation where the officer misconduct is either related to the investigation or the finding of misconduct could reasonably impact on the case against the accused". The Supreme Court has listed what every officer misconduct report is to contain:

- a. any conviction or finding of guilt under the Criminal Code of Canada or under the
- b. Controlled Drugs and Substances Act for which a pardon has not been granted;
- c. any outstanding charges under the Criminal Code of Canada or the Controlled

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- d. Drugs and Substances Act;
- e. any conviction or finding of guilt under any other federal or provincial statute;
- f. an exception may be made for minor contraventions of provincial regulatory offences (tickets for speeding or not wearing a seat belt); .

7. The reference to misconduct proceedings under provincial police legislation does not apply to federal enforcement officers. In so far as there is an applicable employment-related proceeding governing conduct of non-police enforcement officers, the fourth and fifth categories are to be read as references to findings and allegations made under that employment-related proceeding.

8. The following are examples of misconduct that may need to be included in a McNeil Report if they are conviction, finding of guilt or charges under a federal or provincial statute or there is a finding of misconduct under an employment-related proceeding governing conduct:

- a. criminal convictions;
- b. use of TC's electronic networks to participate in or conduct unlawful activities;
- c. forgery, falsification or suppression of TC documents;
- d. obstructing or refusing to co-operate in an investigation (internal);
- e. embezzlement;
- f. soliciting or accepting a bribe;
- g. theft;
- h. violation of legislation enforced by TC;
- i. obtaining or attempting to obtain leave fraudulently;
- j. unauthorized disclosure of sensitive/confidential information;
- k. any misconduct for which a suspension was received.

9. Convictions (unpardoned) and/or outstanding charges under the following need to be included in a McNeil Report:

- a. Criminal Code of Canada;
- b. Controlled Drugs and Substance Act;
- c. any other federal statute;
- d. any provincial statute (with the exception of outstanding charges, convictions or findings of guilt for minor traffic infractions or other minor regulatory offences (i.e. tickets for speeding or not wearing a seat belt).

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10. Any current investigation being undertaken by TC and related to the above-noted types of misconduct, which the officer is aware of, must be reported.

11. A McNeil Report must be completed for any findings of serious misconduct, similar to those listed above, for which discipline was taken against an employee in previous employment outside of TC which is currently in the officer's personal file, regardless of when the misconduct took place. It will be up to Crown Counsel to determine the relevance of the misconduct to the case at hand and whether it must be disclosed to Defence Counsel.

ROLES AND RESPONSIBILITIES

Case Officer (Lead)

12. The Case Officer will:

- a. compile a list of officers involved in the investigation of the accused and include officers who may be called upon to testify in the prosecution;
- b. prepare a McNeil Report (blank form) for each officer identified on the list (refer to annex));
- c. distribute the Report (form) to all officers identified;
- d. provide an explanation to all officers identified as to their obligations under McNeil and ensure that the officers understand their responsibility;
- e. note on the officer list when a Report (form) and explanation has been given to a particular officer and have the officer sign the list;
- f. provide to Crown Counsel, a list of officers who have been given a McNeil Report form;
- g. respond to any queries or requests that Crown Counsel may have.

Regional Manager

13. The Operations Manager / Regional or Executive director will:

- a. at least once a year review with officers their obligations under McNeil;
- b. review the case officer's list of officers who may be called upon to testify before it is given to Crown Counsel. In each case ensure that all officers involved in the investigation, including those who are potential witnesses are identified and have been informed of their responsibilities under McNeil;

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- c. if aware that an officer involved in a case has been disciplined for serious misconduct or has been charged with an offence and a McNeil Report should be completed ensure that Crown Counsel has received a report concerning the reportable misconduct. The Regional Manager may be aware of the item by virtue of an internal misconduct review;
- d. in instances where the responsible manager is aware that the contents of a particular officer's McNeil Report has negatively impacted a case an evaluation must be conducted in collaboration with Human Resources Labour Relations whether the officer continues to be able to carry out the tasks required to perform their duties, in accordance with Human Resources policies;
- e. the responsible manager must promptly inform the appropriate Director General and Chief Enforcement Officer of any situation where the Human Resources Labour Relations' involvement is required.

Officers Involved in the Investigation (including those who are potential witnesses)

14. The Officer involved will:

- a. do a self-review and assessment of any findings or current allegations of serious work-related misconduct;
- b. do a self-review and assessment of any convictions under the Criminal Code, the Controlled Drugs and Substances Act or a federal or provincial statute or any outstanding charges under a federal statute;
- c. if unsure whether a particular incident of serious misconduct should be included in McNeil Report, officers should indicate their uncertainty or concern directly on the McNeil Report form and submit it. The prosecuting Crown Counsel could respond when the witness is determined to be needed for the prosecution;
- d. the officer must be able to justify why a particular serious misconduct incident was voluntarily not included in the McNeil Report;
- e. all officers whose conduct has resulted in findings or allegations as described in paragraphs 9(a) and 9(b) above or in conviction or outstanding charges as described in paragraph 9(c) above, must fill out a McNeil Report and forward the envelope directly to Crown Counsel. The officer must retain a copy of the report and proof that the report was hand delivered or sent via registered mail to Crown Counsel;
- f. update or prepare a new McNeil Report if any serious misconduct that must be reported occurs prior to the conclusion of any prosecution in which the officer

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was involved in the investigation or was or will be a witness and forward directly to Crown Counsel;

- g. discuss the contents of the McNeil Report with Crown Counsel when/if contacted and provide specific documents if requested;
- h. review Transport Canada's Code of Ethics and Conduct to determine if any misconduct that must be disclosed in a McNeil Report is also required to be reported to management as outlined in the Code;
- i. it is the duty of an officer involved in an investigation that proceeds to prosecution including those who are potential witnesses to fill out a McNeil Report if the criteria for disclosure are satisfied. Those officers who fail or refuse to complete it when required to do so will be considered insubordination and could be subject to disciplinary measure. The completion of the McNeil Report is not a choice, it is a legal requirement;
- j. Officers who are potential witnesses and who have nothing to report are not required to fill out a McNeil Report, unless requested to do so. In such a case, they can indicate that they have nothing to report.

PROCEDURES

GENERAL

15. The Case Officer (lead) will compile a list of witnesses and prepare a package to give to each witness to fulfill their McNeil reporting requirements. The McNeil Report package will consist of the following:

- a. an envelope pre-addressed to Crown Counsel with case name and number;
- b. a blank McNeil Report form (except for case name and number) -refer to annex;
- c. instructions on how to fill out the report and the procedures to ensure delivery directly to Crown Counsel assigned to the file or to the chief federal prosecutor of the regional office or their designate - refer to annex .

16. The Case Officer (lead) will ensure that each witness is aware of their responsibilities related to the McNeil Report and note on the list of witnesses that all relevant information has been given to each witness. The witnesses will be required to sign the witness list indicating that they have received the package and an explanation or a copy of this directive. The Case Officer (lead) must forward the list of witnesses to the Crown Counsel at the time the case is referred to

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Crown Counsel. If additional witnesses are identified later then the Case Officer will follow the same procedure with them.

17. Witnesses will be required to self-identify and report any findings or allegations of employment related investigations for work-related misconduct. In addition, they will be required to report any convictions or pending charges under federal or provincial statutes which relate to the actual investigation or could relate to their credibility as a witness in the subject proceedings. If they determine that they have an item(s) that should be reported they will be required to fill in a Report. If the witness determines that they have nothing to report then they are not required to prepare a report.

18. If a witness is unsure whether a particular item should be reported they should indicate their uncertainty or concern directly on the McNeil Report (form) and submit it. The prosecuting Crown Counsel could respond when the witness is determined to be needed for the prosecution.

19. As a result of regional Crown differences in the administration of the McNeil decision, the Regional Manager and the local Crown office should agree on whether witnesses should address the McNeil Reports to the chief federal prosecutor or their designate or wait until a federal prosecutor has been assigned to the case. The reports should be hand delivered (a receipt must be obtained) or sent by registered mail in order to ensure that delivery can be tracked.

20. If a witness is the subject of any work related misconduct allegations and/or convictions or pending charges under a federal or provincial act at any time prior to start of the trial they should refer to the package provided previously by the Case Officer (lead). If they determine that an item(s) should be reported to Crown then a report should be prepared and forwarded directly to Crown Counsel. If a witness has already made a McNeil Report and needs to add items they should contact the Crown Counsel directly to inform them of the additional information. Conversely, if a witness submitted a McNeil Report based on outstanding allegations of work related misconduct or charges laid under provincial or federal legislation, and those allegations or charges are dismissed prior to completion of the Transport Canada case; the witness should prepare a new McNeil Report and provide a written explanation of the changes and forward it to the Crown Counsel assigned to the case.

TIMING OF MCNEIL REPORTS

21. McNeil reporting to Crown should be done, normally, at the same time as the submission of the court brief to Crown. The Case Officer (lead) should provide all potential witnesses with the McNeil package at least two weeks prior to the submission to ensure that the completed

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McNeil Reports are received by Crown at approximately the same time as the court brief. The Crown may request that disclosure be made earlier if preliminary discussions have taken place. The Case Officer (lead) must also provide Crown Counsel with a list of witnesses, the date they were provided with a McNeil package and a witness signature at the time of the court brief.

22. Cases which have been referred to the Crown prior to the coming into effect of this directive should be reviewed to ensure that all witnesses have been provided with a McNeil package. The witnesses should be instructed to fill a report out (if required) and forward it to Crown in accordance with this directive.

PRIVACY OF EMPLOYEE INFORMATION

23. A Transport Canada employee may have a privacy interest in information included in a McNeil Report. Transport Canada and its employees differ from police agencies in that police misconduct and discipline imposed are available to the public and attract only a limited privacy interest. Departmental misconduct and any discipline imposed are not available publicly and may only be accessed by authorized Transport Canada management and only when appropriate. The privacy interest of an employee in their discipline or personnel file is not waived or lost as a result of the completion of a McNeil Report with the exception of when disclosure of serious misconduct relevant to the case against the accused is made to defence during the course of court proceedings. Even then officers may make submissions regarding any privacy concerns to the Crown Counsel prior to disclosure for the purpose of having limitations placed on the dissemination of the information if possible.

24. These procedures are designed to balance the interests of the employee in protecting their personal and private information with the right of the accused to a fair trial by accessing information necessary to make full answer and defence. Accordingly, the Crown Counsel is responsible to act as the gatekeeper and to make a decision whether the contents of the Report are relevant to the issues in the prosecution and defence of the accused and need to be disclosed. The accused has no right to disclosure of disciplinary matters that have no bearing on his or her case.

25. Witnesses who disclose an item in a McNeil Report can indicate to the Crown that they wish to discuss the item with them prior to disclosure to defence. They will be given the opportunity to explain why the item should not be disclosed to defence or to explore possible options for restricting the dissemination of the information once disclosed.

26. If information is released to Defence Counsel there is a possibility that it will be introduced as evidence in open court during the proceedings.

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2.8.1 Standard on Disclosure of Officer Misconduct

27. If Transport Canada management becomes aware of criminal charges or convictions under any federal or provincial legislation or any work related findings of serious misconduct against an Transport Canada employee, they are obligated to review the information and determine if it has an impact on the credibility of the employee or if it amounts to improper conduct in accordance with the Code of Ethics and Conduct stipulations.

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Annex A – McNeil Report Letter to Employee

Date

«Name»

«Address»

«city», «prov»

«postal code»

Subject: Disclosure of Inspector Misconduct (McNeil Report)

Dear colleague,

You have been identified as having worked on the *[insert investigation identification]* investigation. As part of Transport Canada's disclosure requirements, inspectors have the duty to forward all material pertaining to this investigation to Crown Counsel so that it can be disclosed to the accused.

As part of this duty to disclose, the Supreme Court of Canada has affirmed in *R v. McNeil* that law enforcement agencies and the Crown are obligated to disclose records of “findings of serious misconduct by officers where the misconduct is either related to the investigation or the finding of the misconduct could reasonably impact on the case against the accused”. Accordingly, as an Inspector who participated in this investigation, you are legally required to report any findings or allegations of misconduct against you to Crown Counsel by filling in the attached form (a McNeil Report).

What Must be Disclosed to the Crown?

As per the Supreme Court’s decision in *R v. McNeil*, the following information should be included in a McNeil Report:

- a) any conviction or finding of guilt under the *Criminal Code* of Canada or under the *Controlled Drugs and Substances Act*, or other federal or provincial statute for which a pardon has not been granted;
- b) any outstanding charges under the *Criminal Code* of Canada or the *Controlled Drugs and Substances Act*;
- c) any discipline by Transport Canada or a former employer for work-related misconduct;
- d) any current investigation by Transport Canada with respect to allegations of work-related misconduct.

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Your Responsibilities

It is your responsibility to:

- a) conduct a self-review and assessment of any findings or current allegations of misconduct as described above and report them to Crown Counsel using the attached form (*McNeil Report*). Forward the envelope directly to Crown Counsel by *[insert date]*. You should retain a copy of the report and proof that the report was hand delivered or sent via registered mail for your records;
- b) fill out a McNeil Report if the criteria for disclosure are satisfied. If you fail or refuse to complete it when required to do so, it will be considered insubordination and you could be subject to disciplinary measure. The completion of the McNeil Report is not a choice, it is a legal requirement.
- c) if unsure whether a particular incident or serious misconduct should be included in a McNeil Report, indicate your uncertainty or concern directly on the McNeil Report form and submit it;
- d) update or prepare a new McNeil Report if any serious misconduct that must be reported occurs prior to the conclusion of prosecution and forward it directly to Crown Counsel;
- e) discuss the contents of the McNeil Report with Crown Counsel when/if contacted and provide specific documents if requested;
- f) review Transport Canada's Code of Values and Ethics to determine if any misconduct that must be disclosed in a McNeil Report is also required to be reported to management;

Privacy

Crown Counsel decides whether the contents of the McNeil Report are relevant to the issues in the prosecution and defence of the accused and need to be disclosed. The accused has no right to disclosure of disciplinary matters that have no bearing on his or her case.

Although information regarding your misconduct may have to be disclosed, depending on the nature of the information and the nature of the case and your role in the investigation, the disclosure does not mean you have waived your privacy rights. You may make submissions regarding any privacy concerns to Crown Counsel prior to disclosure for the purpose of having limitations placed on the dissemination of the information if possible. However, please note that if information is released to Defence Counsel, there is a possibility that it will be introduced as evidence in open court during the proceedings.

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2.8.1 Standard on Disclosure of Officer Misconduct

Crown Counsel may report to Transport Canada management that they have determined that a particular employee has credibility issues that may affect their ability to act as a witness in criminal proceedings. If Transport Canada management becomes aware of criminal charges or convictions under any federal or provincial legislation or any work related findings of serious misconduct against an employee, they are obligated to review the information and determine if it has an impact on the credibility of the employee or if it amounts to improper conduct in accordance with Transport Canada's Code of Values and Ethics.

If you have any questions or require more information, please do not hesitate to contact me at *[insert phone number]* or at *[insert email address]*.

Sincerely,

[insert name]

[insert position]

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Annex B – McNeil Report Instructions

Please mark boxes 1 to 5 as they apply to you. You should outline any information arising from the declarations made in boxes 1 to 5 in the table provided at number 6.

If you have privacy or other concerns about the disclosure to the defence of information in the report, please bring those concerns to the attention of Crown counsel on the form or on an additional piece of paper if necessary. Although Crown counsel makes the final decision on what is legally disclosable to defence, it may be possible to protect some information from disclosure for privacy or other reasons. Crown Counsel may contact you to discuss the information provided in the Report further and to obtain any relevant documentation.

Once this McNeil Report is completed, place it in the preaddressed envelope provided and seal the envelope. Forward the envelope by [insert date], either by hand delivery (a receipt must be obtained) or by registered mail directly to Crown Counsel.

If boxes 1 to 5 do not apply to you, you are not required to complete the form or send the form to Crown Counsel.

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Transport Canada – McNeil Report

CASE NAME:	CASE FILE #:
OFFICER FULL NAME:	OFFICE:
ADDRESS:	TELEPHONE NUMBER:
EMAIL ADDRESS:	

INDICATE YOUR PRIMARY ROLE IN THE CASE

- ☐ Case Officer / Lead
- ☐ Lead Investigator
- ☐ Lead Inspector
- ☐ Supporting Officer (search, investigation, inspection, sampling, analysis, etc)
- ☐ Other, please specify:

1. ☐ I have a conviction or finding of guilt under the *Criminal Code* of Canada or under the *Controlled Drugs and Substances Act*, or other federal or provincial statute, for which a pardon has not been granted.

2. ☐ I have an outstanding charge under the *Criminal Code* of Canada or the *Controlled Drugs and Substances Act*.

3. ☐ I have been disciplined by Transport Canada or a former employer for work-related misconduct.

4. ☐ I am currently under investigation by Transport Canada with respect to allegations of work-related misconduct.

5. Pertaining directly to the same investigation which forms the subject matter of the charge(s) against the accused:

☐ I am under investigation or have been disciplined by Transport Canada for work-related misconduct.

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6. Complete the following chart outlining any charges, convictions, findings of guilt and/or allegations referred to in paragraphs 1 to 5 above.

Charge / Conviction / Finding of Guilt / Allegation		
Date of Offence (MM/DD/YYYY)	Nature of Offence	Disposition / Sanction

(Where additional space is required, continue on a blank sheet of paper and attach it to this report)

Authorizations

I have read the instructions attached to this report and the information I have provided is true to the best of my knowledge and belief.

I am aware that I have a continuing obligation to provide up-to-date information to Public Prosecution Services of Canada should a new finding or a new allegation of serious misconduct arise.

I understand that the information being provided in this Report will be treated in accordance with the laws of Canada, and will be reviewed by Crown counsel who will determine the relevancy of the information to my credibility and reliability as a witness and to the issues in the prosecution or defence of the accused. I understand that the information may be provided to the accused and their counsel.

Employee Signature:

Date:

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Chapter II Legal Processes, Practices and Requirements 2.9 Major Case Management Principles

Note: This capability is not currently available. The Centre of Enforcement Expertise plans to implement Major Case Management (MCM) when its Investigation Service is fully operational.

Major Case Management (MCM) is a systematic methodology emphasizing accountability that takes a multi-disciplinary approach to managing large investigations. The MCM system comprises a centralized coordinating body, investigative standards, standardized training and common case management technology.

MCM software provides investigators with the necessary tools to organize, manage, retrieve and analyze the potentially large volumes of investigative data collected during major investigations.

The MCM System was originally mandated by statute for the policing community in the Province of Ontario as the result of a judicial review of law enforcement practices in the Paul Bernardo case in the 1990s. In following years, the MCM system has been adopted by most jurisdictions across Canada with its application extending to investigative bodies as diverse as animal humane societies, workplace health and safety bodies and regulatory enforcement agencies.

MCM Principles and Structure

The MCM System is designed to provide for a flexible yet standardized response to major case investigations based on the requirements of the particular case.

The circumstances of each major case will dictate the level and extent to which resources will be assigned to each investigative function. The functions may be used as an investigative checklist by a Major Case Manager to conduct a systematic and ongoing examination of the circumstances of a case. The objective is to ensure that the response is commensurate with the requirements of the particular investigation.

MCM is organized around a command triangle consisting of the functions and responsibilities of:

- Major Case Management
- Primary Investigation
- File Coordination

The Command Triangle formed to manage a case will reflect the above functions by consisting of:

- A Major Case Manager

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2.9 Major Case Management Principles

- A Primary Investigator
- A File Coordinator

In smaller or less complex cases, these functions may be combined in the responsibilities of one or more persons reflecting the scalable nature of the MCM approach. A specific set of responsibilities attach to each of these functions. These specific responsibilities remain to be determined in the context of the Transport Canada (TC) Investigation Services.

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Chapter II Legal Processes, Practices and Requirements 2.9.2 Operational Support/Surge Capacity

The Centre of Enforcement Expertise (CEE) manages a departmental Surge Capacity Team (SCT) to provide investigative resources to Regions and Programs in specified circumstances for limited periods of time (maximum of 15 working days absent exceptional circumstances.) The Executive Director of the Centre of Enforcement Expertise is authorized to deploy investigative resources in support of these activities.

The SCT is currently comprised of Inspectors from each Region (including NHQ). The team has the capacity to provide services in both official languages and Inspectors are trained to assist in obtaining search warrants.

The CEE's SCT is for investigation support and will not be deployed to perform inspections while regional inspectors are assigned to an investigation.

Regions and/or Programs are expected to allocate their resources and available trained staff to an investigation before requesting support from the Centre of Enforcement Expertise. This includes contacting the program/modal DG at Headquarters to determine if assistance can be provided.

Each member of the SCT will be provided with a "Go-Kit" so that in the event they are deployed to an incident they will have the tools available to provide immediate assistance upon arrival. The Go-Kit will contain evidence gathering equipment along with safety equipment that meets safety requirements of the program they are assisting.

Criteria for Deployment

Regions and/or Programs may request the assistance of the SCT in situations or scenarios with one or more of the following features:

- The Region or Program lacks the investigative skill sets to conduct a fulsome investigation into a matter.
- The Region or Program has two (2) or more major investigations/incidents underway simultaneously.
- *The investigation(s) involves a major, high-profile event with the potential for penal consequences and requirements for judicial authorizations (i.e. search warrants, production orders, etc.) (National Interest Event)
- *An investigation involves a substantial number of witnesses or suspects and additional investigative resources are needed for interviews and evidence collection and/or analysis. (Complex Investigation)
- *The incident may have significant public attention. (Politically Sensitive Event)

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Chapter II Legal Processes, Practices and Requirements 2.9.2 Operational Support/Surge Capacity

*Asterisks indicate the potential for deployment to be for a Major Case Management event.

Factors evaluated by the Executive Director of the CEE in considering whether to deploy members of the SCT with the appropriate skills include the following:

- Is there a documented investigation plan in place? If so, a copy is to be provided to the SCT lead.
- What is the potential nature of the alleged offences (i.e. Administrative Monetary Penalty, summary conviction, indictable offence, hybrid offence)?
- Which Program is the lead? Who is the Regional Lead (OPI) managing the operational conduct of the investigation? (In this scenario the SCT's role is to support the Region/Program.)
- Are other agencies involved in the investigation (i.e. federal or provincial regulatory agencies, coroner's service, foreign agencies), that could have over riding jurisdiction?
- Are law enforcement agencies involved in the investigation (i.e. police of jurisdiction, provincial police, RCMP) that could have over riding jurisdiction?
- Is the Public Prosecution Service of Canada engaged? Provincial Crown?
- What is the nature of the requirement for investigative resources?
 - Research
 - Taking of witness statements
 - Conducting interviews and/or interrogations
 - Preparing various applications for judicial authorities (i.e. Information to Obtain, Production Orders, Search Warrants, Case Reports, etc.)
 - Executing judicial authorities (i.e. searches, analysis of evidence, etc.)
 - Are Major Case Management capabilities required? *Note: See Chapter 2.9 for a general description of MCM.*
- How many investigators are requested, with what skill sets, for how long?

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Chapter II Legal Processes, Practices and Standards

2.10 Standard on the Use of Cautions and Warnings

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TITLE

Standard on the Use of Cautions and Warnings

SUBJECT

Enforcement Officers carrying out inspections, receiving complaints and conducting investigations will often question witnesses, victims, complainants and suspects as part of their normal duties.

Transport Canada (TC) enforcement officers are not peace officers and do not have peace officer status. Their obligations to provide cautions and warnings arise from their designation and authorization under TC statutes to carry out enforcement activities.

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2.10 Standard on the Use of Cautions and Warnings

They may not arrest or detain a person, however have equally important obligations as “public officers”. This chapter is the standard for the administration of the cautions and warnings when officers have determined that they have reasonable grounds to suspect that a person may have committed an offence punishable on summary conviction (or on indictment) **and** they have determined that the person may be proceeded against by way of summary conviction (or on indictment).

Cautions and warnings must not be administered by enforcement officers unless done in accordance with this standard. Unless the person is at the real risk of a penal consequence (i.e. convicted following Criminal Code procedure) then the cautions and warnings need not and should not be administered (i.e. if an enforcement officer is pursuing an administrative monetary penalty there is no need to caution or warn).

POLICY STATEMENT

It is the policy of TC to provide cautions and warnings in accordance with the ***Charter of Rights and Freedoms***, TC statutes and regulations and case law.

This standard sets out the specific situations where cautions and warnings must be administered and the language to be used.

Administration of cautions and warnings other than in accordance with this standard is not permitted. Once an enforcement officer administers a caution or warning, he or she has demonstrated that he or she will recommend a penal sanction. He or she will be deemed to have crossed the “Rubicon”.

The purpose of this standard is to establish procedures for when and how to administer cautions and/or warnings and what is the language that must be used.

This standard applies to all TC enforcement personnel and the language used in this Standard is the only acceptable language for the administration of either the caution or the warning¹.

¹ This language is exactly the same as that reproduced on the TC Standard Issue Caution and Warning Card.

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2.10 Standard on the Use of Cautions and Warnings

POLICY REQUIREMENTS TC STANDARD ON THE USE OF CAUTIONS AND WARNINGS

Cautions and Warnings – What the Enforcement Officer Says

During interactions with witnesses and suspects, TC enforcement officers ensure that the results of those interactions can be employed later in court proceedings. This is what the enforcement officer reads from his or her **Caution and Warning Card**

"I am a _____ [State your title – type of inspector/investigator, e.g. Marine Safety Inspector, Railway Safety Inspector] enforcing _____ [statute title, e.g. the Railway Safety Act, the Canada Shipping Act, 2001, the Aeronautics Act]."

"I am advising you that I am investigating _____ [identify the occurrence, e.g. the false entry in the log book on March 31, 2018] and charges may be laid against you under the _____ [statute title. e.g. The Railway Safety Act, the Canada Shipping Act, 2001, or the Aeronautics Act] as a result of this investigation. [Summary Conviction or Indictment only - not administrative]"

"You are neither under arrest nor being detained. You are free to leave at any time. Also, you need not say anything at this time. You have nothing to hope from any promises or favour and nothing to fear from any threat whether or not you say anything. However, anything you do say may be used as evidence. Do you understand?"

"You may contact a lawyer of your choice without delay or obtain free legal advice through the Legal Aid plan. The Legal Aid number is: _____ [advise subject of local Legal Aid Duty Counsel Number]. Do you understand? Do you wish to consult a lawyer now?"

The enforcement officer records in his or her notebook the fact that he or she read the above from the **Caution and Warning Card** and the specific responses of the person to whom the Caution and Warning Card was read. Where the interview is recorded ensure cautions and warnings and responses are also recorded.

Cautions and Warnings – To Whom and When

Cautions and warnings are only administered in certain circumstances and to certain parties. Just because it is possible that a violation could become an offence is

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insufficient on its own to require a caution or a warning. Once an enforcement officer has crossed “the Rubicon” and is conducting an investigation into prosecutable offences then cautions and warnings should be administered in the form above.

Where there is no discretion to pursue a contravention administratively (i.e. for which no Administrative Monetary Penalty is available) then the enforcement officer must administer the caution and warning in the form above.

SPECIFIC SITUATIONS

Person accused or suspected of an offence: Full caution and warning

Where the enforcement officer has reasonable grounds to suspect that the person has committed the offence and has determined that he or she will recommend a prosecution, then the enforcement officer must administer the full caution and warning in the form above.

Caution should be administered at the penal investigation stage when officer is looking to question a person suspected of having committed a prosecutable offence.

Witnesses

No caution or warning is administered so long as the party remains as a witness. If they become in the mind of the officer, a person suspected of committing an offence, then the officer must administer the full caution and warning.

Corporate officers

Where a company is accused or suspected of having committed an offence and the enforcement officer has determined that he or she will recommend a prosecution, it is a good practice when interviewing a senior official of the corporation to administer the caution and warning in the form above. Even though not required it is a good practice to give caution and warning.

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2.10 Standard on the Use of Cautions and Warnings

Person suspected of a violation which can only be proceeded with by way of administrative monetary penalty

No Caution or Warning is required. In an administrative investigation or inspection, No Caution or Warning is required where there is no ability to proceed by way of summary conviction or on indictment (e.g. any *Aeronautics Act* designated provision).

Where the Party responds that they wish to contact a lawyer

Where subject responds that they wish to contact a lawyer, hold off any further questioning until they indicate they are prepared to speak. Once they have responded that they wish to contact a lawyer, enforcement officers should not immediately inquire if they wish to continue to respond. They are free to go. A good practice is to offer them the opportunity to contact a lawyer. If they accept the opportunity and then return and without prompting provide a statement, then that statement should be documented. An enforcement officer may ask after the party has consulted with his or her lawyer if they wish to provide a statement and unless they answer affirmatively the interview is effectively over. If they do agree to provide a statement even after talking to a lawyer, then a good practice is to note this in the enforcement officer's notebook and confirm their agreement that they are willing to speak with the officer after they have spoken with the lawyer.

Secondary Caution / Prior Statement

Where a person has already made a statement in relation to an event and an enforcement officer is once again engaging with the person for the purpose of learning about the offence the following secondary caution should be administered:

If you have already made a statement on this matter to me or another officer, that statement should not influence your decision to speak to me at this time.

You are not obliged to repeat what you felt influenced or compelled to say earlier, nor are you obliged to say anything further, but whatever you say may be used as evidence.

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Chapter III Organization and Administration

3.0 Foreword

The Centre of Enforcement Expertise (Centre) is the Department's primary source of expertise, knowledge and guidance on transportation enforcement matters. This foreword describes, at a general level, the services and products available from the Centre. Detailed descriptions of business lines and associated material are found in the chapters that follow.

Structure of the Centre

The Centre is led by an Executive Director and consists of three distinct units:

- Multimodal Advisory and Appeals;
- Investigations Services, which includes the Surge Capacity Team; and,
- Enforcement Standards and Programs.

Vision:

The Centre's vision is to work toward a common approach to TC's enforcement regime in all modes (air, marine and surface) and programs, in the Regions and at Headquarters, by providing coordinated and consistent guidance, advice and support on all aspects of TC's mandated enforcement authorities and activities. These efforts contribute to strengthen TC's oversight regime and its strategic outcome of enhancing the safety and security of Canada's transportation system.

Mandate:

To provide functional enforcement guidance and advice, including the development of Departmental Enforcement Standards applicable across all modal programs; advisory and appeals services on behalf of the Department for all modal programs; and, case-specific enforcement and investigations advice and support and investigative surge capacity.

The Centre's Services

The Centre leads the development of national enforcement standards, procedures tools and templates, including the Desk Book, as well as enforcement quality assurance programs and major litigation support. It provides products and services to TC's enforcement programs from a departmental perspective that apply to all of the modal programs. This includes the following activities:

- Supporting ADMs in advising the Deputy Minister/Minister on enforcement issues and recommending actions, as appropriate;
- Providing ongoing operational support, advice and guidance to the modal programs on active enforcement and investigation files;
- Developing and supporting the initiatives and priorities of the ECC;

- Leading the development of Major Case Management principles and concepts;
- On request, coordinating the deployment of the Surge Capacity Team to provide specialized inspection and enforcement support by assigning dedicated resources on a time-limited basis to assist Regions/Programs in managing large inspection and enforcement events;
- Collaborating with the MITT to develop and deliver mandated training related to enforcement and investigations;
- Managing the multimodal delivery of case management and representation for cases being heard by the Transportation Appeal Tribunal of Canada (TATC);
- Developing and managing a reconsideration process when a TATC decision requires the Minister to reconsider a matter;
- Training and updating regional Hearing and Case Advisors, including teleconferences and workshops;
- Monitoring and reporting on enforcement issues across the country, within TC and in other federal government departments when TC may have an interest;
- Developing and implementing a departmental enforcement reporting system to ensure the consistent collection of enforcement data across the modal programs and providing analysis of enforcement data to the ADM and modal program DGs; and,
- Tracking modal inspection data to ensure consistent and timely identification of trends in non-compliance and early flagging of systemic non-compliance in modal programs or by individual regulated parties.
- Developing and entering into Memoranda of Understanding (MOUs), and serving as departmental liaison, with enforcement partners, including the Public Prosecution Service of Canada (PPSC) and law enforcement agencies.

Governance

The Enforcement Coordination Committee, is co-chaired by the Assistant Deputy Minister, Safety and Security and the Regional Director General, Quebec Region:

- Ensures that the principles of a strong, multimodal enforcement program are established and monitored;
- Enables continuous improvement of TC enforcement activities (i.e., national consistency, standardization, quality assurance), supported by reports and data;
- Develops and monitors the Department's multimodal enforcement approach, in collaboration with TC Legal Services Unit and Program leads to ensure that enforcement activities are executed, in a consistent and timely manner; Provides advice to responsible Assistant Deputy Ministers (i.e., ADM Safety and Security and ADM Programs); and
- Provides guidance and direction to the Centre in identifying priorities, trends, reporting rates, and anticipated service requirements.

The Centre serves as the Secretariat for the Enforcement Coordination Committee. The Terms of Reference (RDIMS: #9990479) and governance structure for the Centre of Enforcement Expertise (RDIMS: #10102852) illustrate key features of the Centre's structure and governance.

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Chapter III Organization and Administration

3.1 Investigation Services

A major transportation safety or security event anywhere in Canada has the potential to overwhelm enforcement resources, particularly post-event investigative resources.

The Investigation Services Unit provides expertise as well as surge capacity in response to case-specific requests for assistance from operations groups within the modes, programs and regions.

The Unit is responsible for providing:

- Tailored surge capacity support for inspections and investigations based on identified needs, including:
 - Investigation capacity support and/or assistance with research or analysis
 - Advice, expertise and support on Judicial Authorizations
 - Assistance with witness statements/interrogations
 - Assistance with providing technical expertise
 - Assistance with evidence collection
 - Working with Crown Counsel in building case
 - Assistance with building of investigation file
 - Assistance utilizing the Major Case Management protocol
- Operational interpretations of inspection or investigation provisions and offences;
- Court support (Federal/Provincial, and TATC) as required;
- Wordings for Notices, Suspensions, Detention Orders, Search Warrants, Production Orders and other judicial authorizations;
- Support directly related to investigations (e.g., notices, affidavits, warrants, chain of custody, orders, Report to Crown Counsel, etc.);
- Advisory services on a case-by-case basis on enforcement activities across all modes and regions, including working with LSU counsel to obtain legal advice as required;
- Timelines for investigations based on complexity;
- Advice, in conjunction with LSU counsel, on international cases and/or enforcement activities being pursued by a mode that has foreign elements;
- Engagement with LSU on legal advisory matters, as required; and
- Support services when a case is submitted for prosecution to the PPSC.

In addition, the Investigation Services Unit will develop and lead the implementation of a Major Case Management process and system.

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Chapter III Organization and Administration

3.1 Investigation Services

Provision of Surge Capacity Support

The CEE will provide surge capacity support to modal programs in the event of an incident and/or to support an investigation, and, in rare circumstances, inspection activities. To request surge capacity support, an authorized representative (regional manager or higher), must contact the CEE and complete the **Activation of Surge Capacity Form**. Please ensure that internal consultation has taken place before the CEE is contacted.

CEE staff will work with the modal program representative to obtain all relevant information to activate the surge capacity team. Surge capacity will be deployed at no cost to the modal program / region for a period of up to ten business days (two weeks). In cases where additional support is required, the Executive Director of the CEE will work with the modal program / region to determine how costs will be managed.

Provision of Enforcement Advice

Transport Canada personnel should contact their immediate Manager, who should follow the modal program process to seek advice or to send a request for enforcement advice to the CEE. Requests should be sent by email to the CEE at TC.CEE-CEAL.TC@tc.gc.ca.

The CEE will engage the officer, the immediate manager and any other program official, including modal functional authorities, necessary to understand the issue and will ensure that advice is communicated to all involved.

In circumstances where it is not practical for an officer to contact the immediate manager prior to seeking advice (e.g., where there is an immediate threat and advice is urgently needed to determine the appropriate harm reduction and/or enforcement response), officers may contact the CEE directly. In such exigent circumstances, advice may be provided to an officer without full engagement with all enforcement team members. In such rare cases where this may occur, the CEE will ensure that all enforcement team members are fully engaged as soon as the exigent circumstances have been addressed.

Enforcement Chiefs Advisory Board (ECAB)

The Enforcement Chiefs Advisory Board (ECAB) was first convened in November, 2017. It is comprised of Enforcement Chiefs within the NCR. The purpose of the ECAB is to identify key issues and concerns that will be collaboratively discussed and analyzed with the goal of seeking a mutually-beneficial solution or determining of best practices. The ECAB was created with the intent of promoting open dialogue between all modes, in partnership with the CEE, to foster an atmosphere of collaboration, problem-solving and inclusiveness.

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Chapter III Organization and Administration

3.1 Investigation Services

The scope of the ECAB is limited to issues that are directly related to the daily operations of each mode. Particular attention should be paid to broader, cross-cutting issues such as best practices, lessons learned, advice sought/provided and areas of mutual concern. Each ECAB participant shall be responsible for information-gathering within their specific mode.

The ECAB is not a decision-making entity, however, through an internal consultative process ECAB will present recommendations to senior management on issues it has either identified or has been asked to review. Agreement is based upon general consensus whereupon each mode has had the opportunity to provide input. Conversely, the ECAB may also serve as a conduit to action senior management decisions or recommendations. Dissemination of information to modes and sections falls to the individual ECAB member.

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3.2 Enforcement Standards and Programs

The Enforcement Standards and Programs Unit develops program and procedural guidance and tools for use across all modal programs. The Enforcement Standards and Programs Unit also collaborates with policy groups elsewhere in the Department to support the development of enforcement policies. Its responsibilities include, but are not limited to, the following:

- Developing and maintaining national departmental enforcement tools, standards and guidance, including the Desk Book, to enhance the consistency and effectiveness of the Department's enforcement program;
- Identifying, developing and assisting in implementing relevant Memoranda of Understanding (MOUs), including the development of an MOU template and guidance for the Centre;
- Identifying, developing and assisting in the implementation of information sharing agreements with other government departments;
- Researching and analyzing options for partnerships with other government departments and/or law enforcement agencies in undertaking some occasional enforcement activities;
- Providing advice, information and assessments of enforcement programs, documentation (including policies, standards and training materials) and instruments used in Transport Canada (TC) and other government departments;
- Working with the MITT group to develop, enhance and revise departmental and program-specific enforcement training; and,
- Developing, implementing and maintaining a Canada Marine Act compliance program for public ports, Canada Port Authorities and the St. Lawrence Seaway that will include the delegation of enforcement authorities to third parties.

The Enforcement and Programs Unit also contributes to the improvement of TC enforcement activities (e.g., national consistency, standardization and quality assurance) through the implementation of a Continuous Improvement Process supported by lessons learned, tracking, monitoring, reporting and data collection. More specifically, this role includes:

- Providing a national perspective on enforcement activities by developing and implementing a department-wide tracking system to collect enforcement data and providing analysis of enforcement data to the ADM and modal program DGs;
- Identifying consistency challenges and/or opportunities across programs;
- Leading the institutionalization of a continuous improvement process, creating goals and performance measures;

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3.2 Enforcement Standards and Programs

- Leading a multimodal Quality Assurance approach on enforcement, particularly with respect to the implementation of new policies, processes, standards, agreements, practices and protocols;
- In consultation with LSU, monitoring TATC and court decisions across the modes to gather and analyse data related to such decisions for input to policies/guidance material;
- Providing litigation coordination and support for TC instructing officials on major cases;
- Developing standardized guidelines and protocols for TC's role in civil litigation (with LSU); and,
- Supporting the development of program enforcement material (e.g., DOSSO and AMP Regimes).

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3.3 Multimodal Advisory and Appeals

The Centre of Enforcement Expertise (CEE) provides advisory and appeals services on behalf of the Department, using a multimodal approach. The Advisory and Appeals Unit will continue to provide case specific functional response to requirements for appearances before the Transportation Appeal Tribunal of Canada (TATC). Nonetheless, it is important to recognize that documentation and witnesses for proceedings will continue to come from elsewhere in the Department where modal programs continue to be responsible for managing enforcement decisions.

The CEE will have the responsibility for deciding, on the basis of a triage process agreed to by the Centre and the Transport Canada, Legal Services Unit (TC LSU), who will represent the Minister before the TATC, namely: (1) a representative of the Region, (2) a representative of the Centre or (3) Justice Counsel.

In those cases where Transport Canada (TC), and not Justice, represents the Minister, the Centre's functional work (with a multimodal mandate), involves providing a Case Presenting Officer (CPO) and Appeal Officer function to all modes and regions. This function includes:

- Carriage of the file once the request for Review or Appeal hearing is sent from the TATC to TC;
- Preparation for the review hearing, including preparation of the disclosure package to the applicant, decision as to who will be the witnesses, witness preparation, response to pre-hearing motions, etc.;
- Review of a Notice to determine if a motion to amend is required prior to the review hearing;
- Recommendations to modal programs on whether TC should proceed to the hearing or whether a Notice should be withdrawn (e.g., due to insufficient evidence, for policy reasons, etc.);
- Coordination with an applicant or their representative with respect to settlement and recommendation to decision maker on the matter;
- Representation of the Minister at the review hearing and representation of the Minister with respect to any written or verbal motions on the file;
- Preparation of submissions in advance of appeal hearings;
- Development and management of a reconsideration process when the TATC decision requires the Minister to reconsider a matter. (NOTE: Multimodal Advisory and Appeals will manage this process for some, but not all modes.)
- Response to motions with respect to appeal hearings before, during or after a hearing (including motions for costs):
 - Representation of the Minister at the Appeal Hearing and initiate motion for costs if required;

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3.3 Multimodal Advisory and Appeals

- Recommendation with respect to whether to file application for judicial review if Minister is not successful at appeal level; and
- Dissemination of information or lessons learned post review, appeal or following a decision not to proceed to either stage.

In those cases where Justice Counsel represents the Minister, the Centre's functional work (with a multimodal mandate), involves assisting counsel with the preparation of necessary documents, research and instruction. The Centre becomes the client.

In all cases, the CEE will be responsible for monitoring and reporting on TATC and other administrative and court decisions across the modes and flag for precedents as appropriate.

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3.4 Role of Legal Services Unit

The Centre of Enforcement Expertise (Centre) receives support on enforcement issues from Transport Canada, Legal Services Unit (TC LSU). The Centre will receive requests for assistance on operational enforcement issues that will require support and input from LSU members with enforcement expertise.

TC Legal Services has assigned a full-time Counsel to respond to the legal demands of the Centre. Dedicated Counsel reports directly the TC LSU Executive Director and has direct access to the Centre's Executive Director and Chiefs. Dedicated Counsel delivers and/or coordinates (in consultation with LSU Executive Director and modal counsel within the LSU) legal support for all core functions of the Centre. This includes but is not limited to:

- Review enforcement policies and provide legal advice;
- Provide timely legal advice on ongoing investigations and where appropriate, engage and coordinate advice with the Public Prosecution Service of Canada (PPSC);
- Participate in triage exercise of Transportation Appeal Tribunal of Canada litigation to determine cases that should be litigated by the Department of Justice (DOJ);
- Facilitate and request assistance, as required, of TC Modal Counsel and external counsel (e.g. access DOJ advisory services and PPSC); and
- Make recommendations to the Centre and the Multimodal Integrated Technical Training Group on specific training needs and participate in the development and delivery of such training.

A key factor in responding to requests is the need for a well-understood and appropriate procedure to forward operational assistance inquiries to the Centre. As indicated in Chapter 3.3 Regions and Programs are expected to identify Liaison Officers who are authorized to contact the Centre after ensuring certain criteria are met.

The Centre does not replace LSU, for legal services. Moreover, Regions and Programs continue to be free to seek, in accordance with the LSU Access to Counsel Policy, legal opinions from LSU directly on matters that do not involve the Centre. Modal Counsel within TC LSU and the dedicated Counsel to the Centre are expected to consult each other and coordinate the delivery of legal services where such services have general implications on compliance and enforcement, and/or require the interpretation of offences, etc.

The provision of timely and effective legal services to operations, policy development and litigation/prosecution is an integral and fundamental aspect of the Centre's work. It is therefore imperative for the Centre and Legal Counsel to establish a working relationship that ensures all legal parameters are properly addressed from the beginning.

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Chapter IV Source Documents/Reference Material

4.0 Foreword

The Centre of Enforcement Expertise develops and provides departmental officers with tools to help them perform their responsibilities related to inspection, investigation and enforcement. The goal of these efforts is to achieve a common approach to the enforcement regime across all programs.

The Centre has developed a generic ***Enforcement Continuum*** that illustrates the various steps along the path from compliance promotion and verification to enforcement responses that may eventually result in a decision of a court or administrative tribunal.

A set of Operational Policies has been developed to help enforcement officers apply a number of enforcement-related concepts. At this time, the operational policies do not appear in this updated edition. The initial operational policies dealing with risk assessment and graduated approach are under substantive review, while the policy on transition from inspection to investigation is available in Chapter 4.3 of the Desk Book.

This body of procedural guidance will grow and evolve over time. These procedures are to be the baseline for all programs. The Department's enforcement programs are to review and amend their procedures accordingly to achieve consistency with the Department's common approach as articulated in the Transport Canada Enforcement Policy and the Centre's operational policies, processes, standards and agreements.

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Chapter IV Source Documents/Reference Material

4.1 Agreements and Memorandums of Understanding

The Centre of Enforcement Expertise (Centre) has a mandate to identify, develop and assist in implementing relevant Memoranda of Understanding (MOUs) and other agreements. The role is performed by the Centre's Policy and Programs unit.

An MOU is a written agreement between one or more parties that outlines a common understanding and/or potential course of action agreed to by all signatories. An MOU will not typically place any legal obligations on the parties, but it does signal a real and expressed statement of intent, providing some level of formality to the arrangement.

MOUs can serve a number of purposes including to provide clarity on the roles and responsibilities of the parties as they relate to a particular issue, to facilitate information-sharing between the parties, or to outline the terms of a client / service provider relationship.

The Centre's focus is enforcement-related MOUs. Centre staff work with programs in the Department to identify opportunities to develop new MOUs – with, for example, other departments, provincial governments, etc. – as needed for enforcement purposes.

The Centre has the mandate to coordinate the Occupational Safety and Health (OSH) MOU between Transport Canada and Human Resources and Skills Development Canada.

MEMORANDUM OF UNDERSTANDING
BETWEEN
EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA
AND
TRANSPORT CANADA
RESPECTING THE APPLICATION AND ENFORCEMENT
OF THE *CANADA LABOUR CODE*, PART II

Labour Program
Employment and Social Development Canada

Safety and Security Group
Transport Canada

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1. PURPOSE

- 1.1 The purpose of this memorandum of understanding (MOU) is to establish a joint administrative arrangement between Employment and Social Development Canada – Labour Program (ESDC-Labour Program) and Transport Canada (TC) for the application and enforcement of the *Canada Labour Code*, Part II (Code) in the federal transportation sector.

2. DEFINITIONS

For the purpose of this MOU:

“appeals officer” means a person who is designated as an appeals officer under section 145.1 of the Code;

“assurance of voluntary compliance” (AVC) means an employer’s or employee’s written commitment to a delegated official that a contravention of the Code, which does not constitute a danger, will be corrected within a specified period of time;

“compliance policy” means a written policy designed to guide compliance activities and ensure a consistent and uniform application and enforcement of the Code to federal employers and employees (700-2 Compliance Policy, Canada Labour Code, Part II);

“direction” means a verbal or written order by a delegated official made pursuant to section 145 of the Code;

“delegated official” means a person that has been delegated certain authorities by the Minister to perform activities related to enforcement of the Code;

“federal transportation sector” means those works, undertakings or businesses within the aviation, marine and rail industries falling within the jurisdiction of the Code;

“extended jurisdiction” means authorization for TC to carry out the administration and enforcement of the Code on behalf of ESDC-Labour for certain employees in the federal transportation sector;

“hazardous occurrence” means an accident, occupational disease or other occurrence arising in the course of, or in connection with, the employee’s work that has caused or is likely to cause injury to the health and safety of an employee or any other person;

“interpretation policy guidelines” (IPGs) means documents designed to provide guidance and clarification to delegated officials and stakeholders on specific issues related to the application and enforcement of the Code;

“on-board employee” means a person who is working on board an aircraft, a vessel (ship) or a train while in operation, as defined in Annex 1; and who is covered by OHS regulations specific to the mode of transportation made pursuant to the Code;

“off-board employee” means a person who is not working on board an aircraft, a vessel (ship) or a train while in operation, as defined in Annex 1; and who is covered by the *Canada Occupational Health and Safety Regulations* made pursuant to the Code;

“operations program directives” (OPDs) means written directives that provide delegated officials with uniform and effective operational and administrative policies, procedures and guidelines on the application and enforcement of the Code;

3. AUTHORITIES AND ACCOUNTABILITIES

- 3.1 The Minister of Labour¹, has sole responsibility to Parliament for the application of the Code.
- 3.2 The Minister of Transport has sole responsibility to Parliament for the application of the following:
 - a) the Aeronautics Act, R.S.C. 1985, c. A-2 (as amended),
 - b) the Canada Shipping Act, 2001; and
 - c) the Railway Safety Act (1985, c. 32 (4th Supp.)).
- 3.3 Both Ministers are jointly responsible for making recommendations in respect of OHS regulations made pursuant to the Code covering on-board employees.
- 3.4 ESDC-Labour Program and Transport Canada are responsible for the investigation of hazardous occurrences in the aviation, marine and railway industries and for the application and enforcement of the Code.
- 3.5 The responsibility for the application and enforcement of the Code in the federal transportation sector is divided as follows:
 - 3.5.1 ESDC-Labour Program is responsible for the application and enforcement of the Code and the investigations of hazardous occurrences for off-board employees as defined in Annex 1; and
 - 3.5.2 Acting on behalf of ESDC-Labour, and pursuant to the present MOU, Transport Canada is responsible for the application and enforcement of the Code and the investigations of hazardous occurrences for on-board employees as defined in Annex 1.

¹ As per the *Department of Employment and Social Development Act*, where no Minister of Labour is specifically appointed, the Minister of Employment and Social Development will exercise the powers and perform the duties and functions of the Minister of Labour. References to the Minister of Labour in legislation or in orders, regulations or other instruments made under legislation is to be read as a reference to the Minister of Employment and Social Development.

- 3.6 Each department is responsible for ensuring that the Code is applied and enforced in accordance with the IPGs and OPDs issued by ESDC-Labour Program, developed in consultation with Transport Canada.
- 3.7 Transport Canada may issue policy documents on the application and enforcement of the Code in the federal transportation sector only after it has ensured, through consultation with ESDC-Labour Program and approval, that the documents are consistent with the overall federal program and policies on OHS.
- 3.8 Transport Canada acknowledges that it is an offence under s.42 of the *Department of Employment and Social Development Act (DESDA)* for anyone to knowingly use or make available personal information otherwise than in accordance with this MOU. An individual found guilty could be subject to a fine of up to \$10,000 or to imprisonment for up to six months, or both. Organizations guilty of the same offence could be subject to a fine of up to \$100,000. This provision applies to ESDC-Labour Program and Transport Canada employees who gather information on behalf of the Minister of Labour in the application and enforcement of the Code to whom the personal information is disclosed.

4. PRINCIPLES AND COMMITMENTS

- 4.1 ESDC-Labour Program and TC will work together so that the purpose of the Code, "to prevent accidents and injury to health arising out of, linked with or occurring in the course of employment", is achieved.
- 4.2 This MOU is an administrative arrangement aimed at ensuring an effective and efficient occupational health and safety (OHS) program delivery in the federal transportation sector.
- 4.3 ESDC-Labour Program and TC are committed to providing timely notification and appropriate consultation whenever the activities and responsibilities of one organization directly affect the activities and responsibilities of the other.
- 4.4 ESDC-Labour Program and TC will co-operate and communicate openly in the application and enforcement of the Code in the federal transportation sector.

5. RELATIVE ROLES AND RESPONSIBILITIES

- 5.1 Every request for assistance from an employer or an employee will receive prompt response from ESDC-Labour Program or TC.
 - 5.1.1 TC is responsible to ensure 24/7 availability of the appropriate delegated officials who are ready to respond upon notification of an event. The officials must be available for employers to report fatalities, serious injuries, refusals to work, and other matters where the employer must contact the regulator as soon as possible, but not later than 24 hours;

5.2 In the federal transportation sector, the following process will be used for determining responsibility when receiving a request for assistance:

- (a) Upon receiving a request for assistance, or notification of a refusal to work, or any matter requiring investigation, ESDC-Labour Program or TC will promptly determine responsibility, consulting with each other as necessary;
- (b) Once ESDC-Labour Program and/or TC have determined which department is responsible the appropriate department will act on the request.
- (c) If ESDC-Labour Program or TC receives the request but subsequently determines that the other department has responsibility, the request will be referred as appropriate.
- (d) If there is confusion or disagreement regarding responsibility for the request it may be discussed with the TC-Technical Advisor/Manager, and the ESDC-Labour Program Advisor/ Manager.
- (e) If no resolution can be reached the ESDC-Labour Program position will prevail (see Section 10 – Dispute Resolution)

5.3 Those persons delegated by the Minister of Labour, exercise all the powers, duties and functions that are provided for in the Code, and its pursuant Regulations, in respect of its application and enforcement, including but not limited to:

- (a) providing information to employers and employees in the federal transportation sector concerning the prevention of health and safety hazards and about compliance with the Code;
- (b) routinely visiting work places subject to the Code to monitor compliance with the Code;
- (c) investigating refusals to work, as provided for by section 129 of the Code;
- (d) investigating fatalities, hazardous occurrences and complaints, in accordance with the OPDs and IPGs;
- (e) consulting with a ESDC-Labour Program – Program Advisor in accordance with any internal administrative procedure developed by the specific TC mode, in all cases of serious accidents once all the facts have been gathered and initial analysis is complete;

- (f) investigating complaints related to health and safety and hazardous occurrences in accordance with the OPDs and IPGs, and in the course of the investigation, and where required:
 - i. obtaining an AVC from an employer or employee where there has been a contravention that does not constitute a danger to an employee; and
 - ii. issuing directions to employers and employees where required; and
 - (g) preparing a prosecution proposal for non-compliance with the Code as described in the OPDs, working with prosecutors from the Public Prosecution Service (PPSC), appearing in court and giving evidence when required.
 - i. the cost of prosecutions relating to non-compliance with the Code and its regulations in respect of the federal transportation sectors of aviation, rail and marine will be covered by TC.
- 5.4 An ESDC-Labour Program – Program Advisor will be responsible for reviewing all directions issued by TC delegated officials in accordance with any internal administrative procedure developed by the specific TC mode.
- 5.5 Any decision made by a delegated official may be subject to appeal before an appeals officer pursuant to section 146 of the Code.
- 5.6 No person to whom powers, duties or functions have been delegated by the Minister and no person who has accompanied or assisted that person may be required to give testimony in a civil suit with regard to information obtained in exercising those powers or performing those duties or functions, except with the written permission of the Minister.
- 5.7 A delegated official employed by TC will advise their direct supervisor and Director General of each circumstance in which an action taken by that official pursuant to the Code, is made the subject of an appeal or any other legal proceeding.
- 5.8 ESDC-Labour Program and TC will co-operate in the development and implementation of OHS promotional activities aimed at employers and employees in the federal transportation sector. ESDC-Labour Program will produce OHS educational and information material and provide any other applicable assistance, as required.

- 5.9 Where a workplace health and safety committee is solely made up of on-board employees, TC will lead in providing assistance to the committee.
- 5.10 Where a workplace health and safety committee is solely made up of off-board employees, ESDC-Labour Program will lead in providing assistance to the committee.
- 5.11 Where a workplace health and safety committee is made up of off-board and on-board employees, ESDC-Labour Program and TC will co-ordinate their activities in providing assistance to the committee.

6. DELEGATED OFFICIAL TRAINING

- 6.1 Persons who meet the standard of knowledge and skills required to carry out the duties and responsibilities of delegated officials may be recommended by TC to the Minister of Labour for delegation of powers, duties and functions for the administration and enforcement of the Code.
- 6.2 ESDC-Labour Program and TC will ensure that delegated officials receive the training necessary to meet the knowledge requirements set out in the Labour Program's "Certification Program for Delegated Officials" in order to carry out their powers, duties and functions effectively. It is each department's responsibility to ensure that delegated officials have received the necessary training outlined in the Certification Program.
- 6.3 ESDC-Labour Program and TC will work together and support each other's training sessions by providing access to ESDC-Labour Program mandatory training required for delegated officials, technical expertise, shared training plans and course calendars, and make training sessions available to each other's employees (as space and resources permit, and with the appropriate sharing of costs).

7. SUPPORT SERVICES

- 7.1 ESDC-Labour Program maintains a number of in-house, central and regional OHS support services to assist in the application and enforcement of the Code, including:
 - (a) contracted industrial hygiene, engineering and laboratory services to be used at TC expense; and

(b) in-house industrial safety engineering expertise.

7.2 TC delegated officials will have access to the above services through the ESDC-Labour Program Headquarters and the applicable regional offices. Arrangements for these services are to be made on a case-by-case basis by contacting:

(a) the ESDC-Labour Program Regional OHS Manager when assistance from the region is required; or

(b) the Manager, OHS Compliance and Operations, when assistance from ESDC-Labour Program National Headquarters (NHQ) is required.

7.3 On request ESDC-Labour Program will provide TC with timely service and opinions regarding the application and enforcement of the Code.

8. INTERDEPARTMENTAL CO-ORDINATION AND GOVERNANCE

8.1 An interdepartmental committee on occupational health and safety (ICOHS) has been established to oversee the co-ordinated, effective and consistent application and enforcement of the Code in federal workplaces. The ICOHS will consist of the ESDC-Labour Program - Workplace Directorate, and will include Senior Management from each extended jurisdiction that have decision making authority for the operations that carry out administration of the Code as set out in this MOU. The ICOHS will meet annually and when required.

8.2 A sub-group of the ICOHS (Sub-ICOHS) will be established to provide an opportunity to discuss working-level issues related to the co-ordinated effective and consistent application and enforcement of the Code within the extended jurisdictions. For the purposes of this MOU, it means the application and enforcement by employees of TC carrying out duties under the Code. Sub-ICOHS will meet annually or when required, be chaired by ESDC-Labour Program within the Workplace Directorate and will consist of individuals involved in the management of administration of the Code employed at TC.

8.2.1 The specific responsibilities of Sub-ICOHS will include, but not be limited to, participating or assisting in:

(a) considering operational issues as they relate to the Code and proposing solutions to resolve actual and potential Code-related OHS problems;

(b) providing the ICOHS members with well-informed briefings of actual or potential Code related actual OHS problems;

(c) supporting ICOSH in:

- i. strategic planning, including the use of performance measures and reporting systems, which could potentially be used to aid the application and enforcement of federal OHS legislation;
- ii. the development, review and revision of directives and policies (e.g., OPDs, IPGs, compliance policy);
- iii. the review, development and recommendation of changes to the Code and regulations governing the extended jurisdiction;
- iv. the establishment of priorities in areas of mutual concern relating to federal OHS legislation;

(d) examining and proposing solutions to OHS policy and examining and proposing potential solutions to other OHS issues as they may relate to the administration of this MOU;

(e) proposing agenda items for ICOHS meetings; and,

(f) preparing background material in support of proposals in order to ensure that ICOHS members have all the necessary information required for policy or other decisions.

8.2.2 The administrative duties for Sub-ICOHS will be provided by the Workplace Directorate which is responsible for program development within ESDC-Labour Program.

8.3 A Regional ICOSH has been established for each ESDC-Labour Program region (RICOHS) to consult, co-ordinate and discuss matters of mutual concern with the extended jurisdiction relating to the application and enforcement of the Code and this MOU.

8.3.1 The ESDC-Labour Program office in each region will chair the RICOHS meetings and will be responsible for providing administrative support to RICOHS. The RICOHS membership will include ESDC-Labour Program – Program Advisors and Managers responsible for the delivery of the federal OHS program in each region and their peer representatives from TC who are also responsible for the delivery of the federal OHS program in the extended jurisdiction.

8.3.2 ESDC-Labour Program is responsible to ensure that RICOHS meets at least once annually.

- 8.3.3 The regional offices of ESDC-Labour Program and TC will annually exchange their respective action plans pertaining to the application of Part II of the Code.
- 8.4 ESDC-Labour Program and TC will consult with each other in the preparation of briefing materials for their respective Ministers on issues directly related to the application and enforcement of the Code. Once final briefing materials are available each department will provide copies.
- 8.5 Assistant Deputy Minister (ADM) level meetings between ESDC-Labour Program and TC will be held twice a year to discuss our continued collaboration and improvements to program development.
- 8.6 Quarterly Director General (DG) level meetings between each TC mode (Aviation, Rail, Marine) and ESDC-Labour Program (Workplace Directorate, Regional Operations and Compliance Directorate) will be held to discuss improvements to program development through coordinated workplans.

9. PERFORMANCE MEASUREMENT AND REPORTING

- 9.1 TC will provide ESDC-Labour Program with quarterly OHS activity reports, to assist with monitoring the performance of the federal OHS program within the federal transportation sectors of Aviation, Rail and Marine on the following activities:
- (a) hazardous occurrences;
 - (b) complaints;
 - (c) refusals to work;
 - (d) AVCs received;
 - (e) directions issued;
 - (f) inspections;
 - (g) investigations; and
 - (h) prosecutions.
- 9.2 TC must include the following information for each activity named above in the quarterly reports:
- (a) sector (rail, aviation, marine);
 - (b) assignment number (reference number);
 - (c) assignment type (e.g. slips/trips/falls, fall from height, amputation, etc);
 - (d) date of assignment;
 - (e) assignment activity;
 - (f) employer legal & common name;
 - (f) region, address, province;

- (g) fatality;
- (h) disabling injuries;
- (i) section of *Canada Labour Code* or Regulations that apply;
- (j) Refusal to Work (RTW) number of employees; and
- (k) assignment outcome.

- 9.3 The Minister of Labour may disclose information obtained during the course of an investigation if the Minister is satisfied that the public disclosure is in the interest of occupational health and safety or the public interest.
- 9.4 In order to monitor the application and enforcement of the Code in the federal transportation sector, upon agreement by both ESDC-Labour Program and TC, the NHQ of ESDC-Labour Program will provide to TC a copy of its finalized annual report (generated from the Employer's Annual Hazardous Occurrence Reports) in relation to employers in the federal transportation sector. These reports will provide employer related information regarding:
- (a) the calculation of the Disabling Injury Incidence Rate (DIIR) as a performance indicator; and
 - (b) hazardous occurrences injuries, illnesses or fatalities.
- 9.5 The Minister of Labour is responsible for reporting to Parliament on the performance of ESDC-Labour Program and TC as it relates to the application and enforcement of the Code.
- 9.6 ESDC-Labour Program, with the advice of the ICOHS, will define and collect performance measures to quantify the effectiveness of the application and enforcement of the Code.
- 9.7 In evaluating the application and enforcement of the Code, ESDC-Labour Program, with the input of ICOHS, will take into account the following factors in support of the performance-based management system:
- (a) provision for measurable objectives, performance standards and a common performance-measurement process as required by Treasury Board;
 - (b) agreement on specified periods during which evaluations will be undertaken; and
 - (c) analysis of resource utilization by TC and cost sharing practices related to arrangements contained in this MOU.
 - (d) joint departmental management of evaluation projects for the federal transportation sector, with evaluation/review groups from each department serving in objective capacities.

10. DISPUTE RESOLUTION

10.1 Disputes between ESDC-Labour Program and TC relating specifically to this MOU will be resolved by the following groups in the order given:

- (a) Director General – Workplace Directorate, ESDC-Labour Program and the respective TC Director General responsible for each transportation sector (aviation, rail and marine).
- (b) ICOHS;
- (c) the Assistant Deputy Minister, Compliance, Operations and Program Development, ESDC-Labour Program, in consultation with the Assistant Deputy Minister, Safety and Security, Transport Canada.

10.2 Where no resolution of a dispute is achieved, the Deputy Minister of ESDC-Labour Program will be responsible for rendering a final decision.

11. AMENDMENTS AND TERMINATION

11.1 Amendments to this agreement will be initiated in writing by either the Assistant Deputy Minister, Compliance, Operations and Program Development, ESDC-Labour Program, or the Assistant Deputy Minister, Safety and Security, Transport Canada.

11.2 This MOU will remain in force until either ESDC-Labour Program or TC gives written notice of its intention to terminate the MOU and 180 days elapse.

12. ENTIRE AGREEMENT

12.1 This MOU, and any amendments thereto, constitutes the entire agreement between ESDC-Labour Program and TC and supersedes all previous negotiations, communications and other agreements relating to the subject matter unless they are incorporated by reference in this MOU.

12.2 This MOU is available to the public.

13. SIGNATORIES

13.1 This MOU sets out the intentions of ESDC-Labour Program and TC but does not create a contractual or legal relationship between them.

13.2 This MOU comes to effect once signed by all parties.

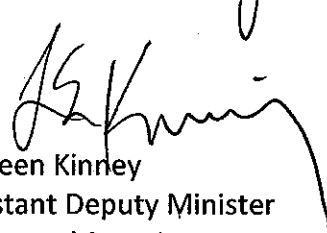
Original signed on NOV 18 2014

15 C/-

Kin Choi
Assistant Deputy Minister
Compliance, Operations and Program Development – Labour Program
Employment and Social Development Canada

Original signed on

January 5/15


Laureen Kinney
Assistant Deputy Minister
Safety and Security
Transport Canada

Administrative Role of Transport Canada: Rail Industry

1. Transport Canada - Rail Safety administers Part II of the Code and the *On-Board Trains Occupational Safety and Health Regulations* in respect of occupational health and safety for:
 - a) on-board operating crews, and on-board service personnel, while on rail passenger equipment in operation,
 - b) on-board operating crews while on rail freight equipment in operation on a rail line, or in a yard marshalling or setting off cars, and includes crew members operating rail switches etc. while off board equipment, and
 - c) employees working in or occupying rail accommodation cars (i.e. "white fleet") that are moving on a rail line.

Administrative Role of Employment and Social Development Canada (ESDC) – Labour Program: Rail Industry

1. ESDC-Labour Program administers Part II of the Code and the *Canada Occupational Health and Safety Regulations* in respect of occupational health and safety of:
 - a) office, station, warehouse, and rail traffic control, employees;
 - b) shop, maintenance-of-way, and repair employees, including while operating self-propelled equipment in a yard or on a rail line;
 - c) employees (including on-board employees) while boarded in employer provided bunkhouses or in employer designated hotels / motels,
 - d) employees (including on-board employees) while using employer provided transportation, other than the employer's own rail equipment, to report to their next shift.
 - e) employees working in or occupying rail accommodation cars (i.e. "white fleet") that are stationary on a rail line.

Administrative Role of Transport Canada: Marine Industry

1. Transport Canada - Marine Safety and Security administers Part II of the Code and Regulations made pursuant thereto, and the *Tackle Regulations* pursuant to the *Canada Shipping Act, 2001* in respect of occupational health and safety for employees working on a vessel (ship) while in operation. Marine Safety's and Security's administrative role also includes employees working, using vessel's (ship's) tackle, in the loading and unloading of vessels (ships) on the shore side to the extent described in section 2 below.

2. The physical area of administrative responsibility of Transport Canada - Marine Safety, with respect to work being performed using vessel's (ship's) tackle, includes the shore area within the scope of the vessel's (ship's) mooring lines and the swing of the vessel's (ship's) boom.

Administrative Role of Employment and Social Development Canada (ESDC) – Labour Program: Marine Industry

1. ESDC-Labour Program administers Part II of the Code and the *Canada Occupational Health and Safety Regulations* in respect of occupational health and safety of off-board employees in the marine industry.

Administrative Role of Transport Canada: Aviation Industry

1. Transport Canada - Civil Aviation administers Part II of the Code and the *Aviation Occupational Health and Safety Regulations* in respect of occupational health and safety for employees employed on board aircraft while in operation and in respect of persons granted access to those aircraft by the employer.

a) For this purpose, "in operation" is described in paragraph 128(5)(b) of Part II of the *Canada Labour Code*. An aircraft is in operation from the time it first moves under its own power for the purposes of taking off in Canada, until it comes to rest at a destination in Canada. As such, an aircraft sitting on a runway outside of Canada is considered to be "in operation".

2. For greater clarity and delineation of responsibilities within the context of refusals to work, if the subject for the refusal of an employee relates to the airworthiness or safety of an aircraft while in operation - the refusal to work will be investigated by TC Aviation.

Administrative Role of Employment and Social Development Canada (ESDC) – Labour Program: Aviation Industry

1. ESDC – Labour Program administers Part II of the Code and the *Canada Occupational Health and Safety Regulations* in respect of occupational health and safety of employees in the aviation industry not employed on board an aircraft while in operation.
2. For greater clarity and delineation of responsibilities within the context of refusals to work, if the subject for the refusal of an employee is not related to the airworthiness or safety of an aircraft while in operation, the refusal to work will be investigated by ESDC Labour Program.

Memorandum of Understanding Regarding Management of Seized Property

Between

TRANSPORT CANADA (TC)

and

**SEIZED PROPERTY MANAGEMENT DIRECTORATE
INTEGRATED SERVICES BRANCH, PUBLIC SERVICE AND PROCUREMENT CANADA (SPMD)**

Whereas the Seized Property Management Directorate has authority to enter into agreements to deliver its seized property mandates;

Whereas the TC has authority to enter into agreements to facilitate the management of assets that are subject to its authorities;

Whereas both parties recognize the importance of collaboration and shared expertise in the application of relevant federal laws and regulations;

Whereas both parties commit to maintaining the highest standards of ethics, transparency and equality towards each other;

Whereas both parties acknowledge that this MOU is neither exclusive, mandatory nor binding to either parties

Whereas both parties commit to respecting the legislation, regulations, rules and procedures of their respective organizations as well as to those of each other's organizations to the extent reasonably possible;

Whereas asset management services may be requested by TC from SPMD; and

Whereas SPMD services will be limited to those described herein, SPMD will act as an agent of TC providing asset management services as requested by TC.

Both parties agree to the following:

1. OBJECTIVE

This MOU specifies the roles and responsibilities of both parties regarding collaborative asset management for assets subject to TC's authority.

2. OBLIGATIONS

2.1. TC commits to:

- a) Estimate total future business volumes on a quarterly basis and best efforts basis and revise as needed in order to support planning;
- b) As required, request SPMD services in writing for :
 - i. consultative services,
 - ii. asset management services,
- c) Make relevant supporting documentation available as needed;

- d) Inform SPMD of all relevant decisions relating to assets from which SPMD is providing services;
- e) Pre-approve SPMD planned costs and expenditures related to requested services;
- f) Communicate all information needed to comply with this agreement and guarantee the accuracy of information provided by TC;
- g) Communicate in as timely a manner as much as possible any information that would impact the provision of services under this MOU;
- h) Pay SPMD on a quarterly basis for mutually agreed expenses, as per the rates outlined in Annex I, and by the methods outlined in article 4 in accordance with this MOU;
- i) Indemnify SPMD for actions taken at the express written direction of TC.
- j) At the outset of the need to utilize SPMD services, advise SPMD of TC's requirements for inclusion in an asset management plan

2.2. SPMD commits to:

- a) Provide a timely response to accept or not accept TC requests for asset management services.
- b) When accepted, provide asset management services as agreed by the parties that include but are not limited to:
 - Providing an asset management plan that addresses the needs and requirements provided by TC (item 2.1.(j) above)
 - Providing reliable and timely service during regular operating hours
 - Providing off-hours service on a best efforts basis;
 - Provide advice;
 - Securing and monitoring assets;
 - Providing video and or photographs of assets upon request;
 - Providing inventory, condition reports and analytical reports;
 - Providing mutually agreed and documented security and asset maintenance services;
 - Providing, when requested, access to assets under SPMD management as needed, including to secret level cleared TC staff and investigators;
 - Returning assets upon request of duly authorized TC staff)
 - Providing recommendations about receiving, managing, preserving, returning and disposing of assets;
 - Billing for services rendered on a quarterly basis (see "d" below).

These services do not include:

- Repairing or substantively improving assets, unless agreed to by both parties;
- Substantive case management decision making.
- c) Bill TC (Centre of Enforcement Expertise) on a quarterly basis for mutually agreed expenses, as per the rates outlined in Annex I, and by the methods outlines in article 4 in accordance with this MOU;
- d) Obtain written approval from TC of all individual expenses in excess of \$1,000 and of overall asset management plans;
- e) Respond promptly (on a best efforts basis) to all TC requests.

2.3. Both parties commit to:

- a) Share and maintain contact information, including that in article 6;
- b) Ensure employees in both organizations are adequately informed and trained to carry out and support this agreement;
- c) Work towards mutually beneficial solutions to any issues or challenges that arise in the implementation of this MOU.

3. LIABILITY

SPMD assumes responsibility and liability for the condition of the assets it manages on behalf of TC under this MOU, SPMD actions and decision and the actions of its agents, as well as for the quality and accuracy of services rendered regarding assets under its care and/or control.

TC assumes responsibility for payment and for consequences of failure to make payments in accordance with this MOU (e.g. termination of service, increased costs, losses, etc). TC will not hold SPMD liable for SPMD action taken with TC's express written consent or direction. TC acknowledges that regardless of efforts to preserve assets, some deterioration/depreciation will occur over long periods and TC will not hold SPMD liable for normal deterioration/depreciation.

Information held by either party that may be relevant to liability, preservation, risk management and/or decision making will be disclosed as permitted by applicable federal legislation and policies as required to maintain assets and support the health and safety of personnel.

4. FINANCIAL ADMINISTRATION

SPMD will provide quarterly invoices for services rendered. Supporting documentation and justifications will be available by SPMD on request of TC.

Transactions will be done through an internal settlement. TC will provide there IS REF and IS ORG for transfer of funds.

Both parties have the right to dispute invoices and by mutual agreement adjust future invoice amounts.

5. CONFIDENTIALITY

Both parties will comply with applicable laws, regulations, policies and procedures of their respective organizations relating to management, retention, protection and access to information relating to all aspects of this MOU.

6. NOTICE AND COMMUNICATIONS

There will be no changes to the MOU without the expressed written consent of both parties.

All notice and communication regarding altering this MOU must be addressed to the parties identified in article 7.

7. REPRESENTATIVES

The parties are represented by:

TC	SPMD
<i>Allan Bartley</i> <i>Executive Director, Centre of Enforcement</i> <i>Expertise</i> <i>Transport Canada</i> <i>330 Sparks Street</i> <i>Ottawa, Ontario K1A 0N5</i> <i>allan.bartley@tc.gc.ca</i>	<i>Carole Ayotte</i> <i>A/Senior Director</i> <i>Direction de la gestion des biens saisis</i> <i>Portage III 9C1</i> <i>11, rue Laurier</i> <i>Gatineau (Québec) K1A 0S5</i> <i>carole.ayotte@pwgsc-tps.gc.ca</i>

Any changes to the information on representatives must be done as promptly as possible, and may be done either by the representative or their immediate supervisor.

8. APPLICABILITY, DURATION AND CANCELLATION

This MOU takes effect upon signature of both parties and remains in effect until cancelled. This MOU is neither exclusive nor mandatory to either party.

Either party can terminate the agreement with 180 days notice. Termination means no new services will be requested. Assets for which services are being rendered at the time of termination may continue at mutual agreement, under the terms of this MOU.

Upon express written mutual agreement, activities undertaken by either party outside this MOU may nevertheless be governed by this MOU.

9. MODIFICATION AND AMENDMENT

Upon express written mutual agreement, this MOU may be modified or amended.

10. DISPUTE RESOLUTION

Any disputes will be resolved by consultation, negotiation compromise and mutual agreement by the representatives of SPMD and TC. Both parties will work towards mutually beneficial resolutions that respect fair and equitable treatment of those involved, including but not limited to the parties.

11. ANNEXES

Annexes I and II are an integral part of this MOU.


Signed in good faith and accepted on behalf of their respective organizations by:

For SEIZED PROPERTY MANAGEMENT DIRECTORATE,
INTEGRATED SERVICES BRANCH, PUBLIC SERVICE AND
PROCUREMENT CANADA (SPMD)


Carole Ayotte, A/Senior Director
MAR 3 2017

Date

Transport Canada
Centre of Enforcement Expertise


Allan Bartley, Executive Director
17-03-10

Date

ANNEX I

SPMD SERVICE RATES

Effective April 1, 2016 to March 31, 2017

Storage Type	Dimensions	Description	Rate per Month
Car	9' x 18' = 162ft ²	Indoor vehicle storage; including vehicle placement, condition of receipt report, ensuring that the interior of the vehicle is sealed from weather elements, keeping tires inflated if possible.	\$200
Car-C	9' x 18' = 162ft ²	Outdoor vehicle storage; including vehicle placement; condition of receipt report, ensuring that the interior of the vehicle is sealed from weather elements, keeping tires inflated if possible.	\$150
Crate14	4' x 4' = 16ft ²	Wooden crate to store small movables. These may be stacked or placed on racking.	\$20
Crate15	4' x 4' = 16ft ²	Wooden crate to store small movables. These may be stacked or placed on racking.	\$20
Crate24	4' x 4' = 16ft ²	Tall wooden crate to store medium size movables. These may not be stacked or placed on racking.	\$30
Crate28	4' x 7' = 28ft ²	Large wooden crate to store larger movables. These may be stacked.	\$35
Moto	4' x 9' = 36ft ²	Indoor vehicle storage. Size reserved for motorcycles, ATV, lawn tractors etc.	\$50
Skid	4' x 4' = 16ft ²	Typical pallet. Will be stacked on racking when possible. Skids hosting taller items will be placed on floor.	\$20
Hourly Rate		Hourly rate for services provided by Case Officer (This may include, but is not limited to; retrieval of specific assets; special maintenance; preparing sales requests; coordinating returns; additional condition reports/photos)	\$150
Admin Fee		One time charge for; creating the file; receiving the assets at the warehouse; inventorying assets, occasional reporting, and processing invoices.	\$150

ANNEX II

These are the current locations where SPMD can secure assets.

1. Dartmouth, NS
2. Montreal, QC
3. Ottawa, ON
4. Toronto, ON
5. Winnipeg, MB
6. Regina, SK
7. Edmonton, AB
8. Langley, BC

Transport Canada - Centre of Enforcement Expertise

Chapter IV Introduction 4.2 Lexicon

How to Use the Lexicon

The Desk Book is a compendium of best practices and standards to support the effective enforcement of Transport Canada legislation which itself has evolved in response to different program objectives. However, for the purposes of the Desk Book, it is important to be able to articulate in common terms what are these enforcement practices.

This lexicon is designed to allow programs and modes to appreciate how the different legislative expressions in fact address the same concepts. The concepts have been grouped thematically below to provide an interpretative aid for readers of the Desk Book.

Transport Canada legislation remains the sole source for any authority to be exercised on behalf of the department.

The Desk Book does not, in and of itself, provide any additional authority for Transport Canada officials or officers beyond that which is contained in legislation. Merely because the job description of an employee includes the responsibility to conduct inspections, this does not by itself provide that employee with the legal basis to use a specific inspection authority. Similarly, where the Desk Book identifies an individual as an “enforcement officer”, it is done to provide a commonly understood description of a function performed by that employee.

The exercise of a specific “enforcement” authority can only be properly undertaken by a person who is authorized, designated or appointed by Transport Canada to exercise that authority. The Desk Book does not alter that fact and a reference within the Desk Book to an inspector or an investigator is a convenience to facilitate communication and understanding of the concepts and responsibilities. Authority to act must still be found within the applicable legislation.

Transport Canada - Centre of Enforcement Expertise

Chapter IV Introduction

4.2 Lexicon

Important Transport Canada Enforcement Terms

Enforcement is an action or activity undertaken by Transport Canada personnel authorized by legislation to do so, guided by policy, for the purposes of responding to unsafe, unsecure or non-compliant actions. The extent of the enforcement response depends on: the authorities contained in the legislation, the gravity of the unsafe, unsecure or non-compliant action and the characteristics of the individual engaged in the unsafe, unsecure or non-compliant action. The purpose of the enforcement can be to resolve any immediate harm or to ensure that the unsafe, unsecure or non-compliant action will not be repeated. Selection of the type of instrument or the magnitude of the response is guided by the determination to prevent recurrence of the unsafe, unsecure or non-compliant action.

Compliance promotion commonly occurs in conjunction with enforcement. It consists of any action designed to encourage or support continued compliance with Transport Canada legislation. It may include information, education, training or advice. While it may take the same form as “verbal counselling” it does not depend upon Transport Canada discovering unsafe, unsecure or non-compliant conditions.

Inspection is an activity taken by Transport Canada to examine or verify an activity or thing or location to determine if the activity, thing or location is in compliance with the applicable legislation.

Investigation is an activity taken by Transport Canada to gather evidence with a view to determining what, if any, form of enforcement response should be imposed as a result of unsafe, unsecure or other non-compliant conditions.

Officer means a person or class of persons authorized pursuant to Transport Canada legislation by whatever means (designation, delegation or appointment) to undertake enforcement activities pursuant to the authorities in the governing legislation. The Desk Book uses the term “enforcement officer” to refer to any person exercising enforcement authority pursuant to Transport Canada legislation. While individual statutes may employ titles including: inspector, enforcement officer, health and safety officer or otherwise, individual authorities are those for which they personally or as a class have been authorized to employ. Specific duties/limitations of officers (i.e. to conduct inspections and/or investigations) are typically found in the authorizing instrument of designation or delegation of authority and may be issued on terms and conditions particular to the individual.

Transport Canada - Centre of Enforcement Expertise

Chapter IV Introduction 4.2 Lexicon

Oversight in the context of the Desk Book refers to any activity undertaken by Transport Canada with the intent of promoting or enhancing safety and security in the transportation system.

Immediate Harm Reduction is an enforcement action taken by Transport Canada to respond to specific unsafe, unsecure or non-compliant actions which have the potential to cause (or have already caused) immediate harm to safety, security or in some cases, the environment. It is a specific authority that may only be exercised following the legislative authorities and using the prescribed forms. For specific authorities and forms consult Chapters 2.1 and 2.2.

Other Useful Terms

Three terms are used to refer to actions which are contrary to Transport Canada legislation. Each of them in normal usage has essentially the same meaning. They are offence, violation and contravention.

For the purposes of the Desk Book the following meanings have been adopted:

Offence means an action contrary to Transport Canada legislation which is being proceeded either summarily following the provisions of Part --- or by way of indictment following the provisions of Part --- of the Criminal Code. The term “regulatory offence” means the same thing. Offences are prosecuted. Following a successful prosecution where the individual charged with the offence is convicted, a punishment is imposed. The individual will have been found guilty or acquitted of the charge against them. They have been exposed to penal liability.

Violation means an action contrary to Transport Canada legislation which is being proceeded with other than as an offence, typically as an Administrative Monetary Penalty.

Contravention means the same as a violation, except where the provision contravened is also a provision that has been designated pursuant to the Contraventions Act.

Transport Canada - Centre of Enforcement Expertise

Chapter V Forms and Templates

5.0 Foreword

Chapter 5 contains standard templates and forms that should be used by TC officers in the course of their enforcement duties as well as when they provide support to litigations, appeals or reviews.

Investigation Forms/Templates

This section includes forms to access investigative tools (e.g. Information to Obtain, Search Warrant, Summary Conviction Information, and Production Order, etc.) The chapter contains both templates and guidance for their completion. This section also includes standard forms for use when seizing evidence and managing exhibits.

Transportation Appeal Tribunal of Canada Forms/Templates

The Advisory and Appeals unit provides representation on behalf of the Minister before the Transportation Appeal Tribunal of Canada (TATC) or other administrative appeals or courts as required. The forms/templates in this section have been developed to support the preparation of such material as required.

Chapter 5 will be periodically updated as required with new or amended forms and templates.



Alleged Offender Statement / Déposition du présumé contrevenant

File/Dossier		
File No : N° de dossier :	Report Serial: N° du rapport:	Report Date: Date du rapport :
Report Caption Rubrique		
Related Files Dossiers connexes		

Alleged Offender Identification / Identification du présumé contrevenant				
Name: Nom :		Given Names Prénoms		
DOB DN (YYYY/MM/DD)				
Cell Phone / cellulaire		Work / travail		Residence / maison
Address – City – Province – Postal Code Adresse – Ville – Province – Code postal				
Height / Taille	Weight / Poids	Hair / Cheveux	Eyes / Yeux	Scars tattoos / Cicatrice-tatouages
Pass-ID No / N° de carte d'identité			Vehicle - Make Model Licence Plate / Véhicule – Marque/Modèle/N° d'immatriculation	

Location / Endroit	
Location / Endroit :	Time/heure/date:
TC Personnel / Employé(e) de TC :	

Recording / Enregistrement						
Audio	Yes Oui		No Non		Eqpt & Serial No Équip. et n° de série	Speed Vitesse
Video	Yes Oui		No Non		Eqpt & Serial No Équip. et n° de série	Lens Lentille
						Speed Vitesse



Alleged Offender Statement / Déposition du présumé contrevenant
(Continued / Suite)

File/Dossier		
File No N° de dossier	Report Serial N° du rapport	Date
Report Caption Rubrique		

Investigation/Charge	Enquête/Inculpation
I am advising you that I am investigating [identify the occurrence] and charges may be laid against you under the [statute title] as a result of this investigation.	Je vous annonce que je mène actuellement une enquête sur (préciser l'évènement) et que des accusations pourraient être portées contre vous en vertu du/de la (titre du règlement/loi), à la suite de cette enquête.
No Arrest or Detention/Right to Silence	Ni arrestation ni détention/Droit au silence
You are neither under arrest nor being detained. You are free to leave at any time. Also you need not say anything at this time. You have nothing to hope from any promises or favour and nothing to fear from any threat whether or not you say anything. However, anything you do say may be used as evidence.	Vous n'êtes ni en état d'arrestation ni en état de détention. Vous avez le droit de partir en tout temps. Vous avez également le droit de garder le silence pour le moment. Que vous décidiez ou non de témoigner, vous ne devez pas espérer obtenir de promesse ou de faveur en retour, ni craindre qu'on vous fasse des menaces. Cependant, tout ce que vous direz pourra servir de preuve contre vous.
Do you understand?	Comprenez-vous?
Possibility of Obtaining Legal Assistance	Possibilité d'obtenir l'assistance d'un avocat
You may contact a lawyer of your choice without delay or obtain free legal advice through the provincial (or territorial) Legal Aid plan. The Legal Aid number is: _____. Do you understand? _____ Do you wish to consult a lawyer now? _____	Vous pouvez consulter un avocat de votre choix sans délai ou obtenir des conseils juridiques gratuits auprès du programme d'aide juridique de votre province (ou territoire). Le numéro de la clinique d'aide juridique est : _____. Comprenez-vous? _____ Souhaitez-vous consulter un avocat maintenant? _____
Secondary Caution/Prior Statement	Mise en garde secondaire/Déposition précédente
If you have already made a statement on this matter to me or another officer, that statement should not influence your decision to speak to me at this time. You are not obliged to repeat what you felt influenced or compelled to say earlier, nor are you obliged to say anything further, but whatever you say may be used as evidence.	Si vous avez déjà fait une déposition devant un autre agent ou moi-même sur le même cas, cette déposition ne devrait pas influencer votre décision de faire une déposition maintenant devant moi. Vous n'êtes pas obligé de répéter ce qui vous a incité ou obligé à dire ce que vous avez dit plus tôt, pas plus que vous n'êtes obligé d'en dire davantage, mais tout ce que vous direz pourra servir de preuve contre vous.
Interviewee /Personne interrogée	
Name Nom	

Statement Begins / Début de la déposition
Time\heure\date:

Signature	Date/heure/time
Witness/Témoïn	Witness/Témoïn



**Alleged Offender Statement / Déposition du présumé contrevenant
(Continued / Suite)**

Interviewee / Personne interrogée	
Name	
Nom	

Statement (Continued) / Déposition (suite)	

Signature	Date/heure/time
Witness/Témoin	Witness/Témoin

Evidence Continuity / Chaîne de possession

File / Dossier		
File No : N° de dossier :	Report Serial : N° de rapport :	Date :
Report Caption : Rubrique		
Related Files : Dossiers connexes :		

Investigator Enquêteur	Register Registre
Date Received : Reçu le :	File No N° de dossier
Details of incident Détails de l'incident	

Item Number / N ^{bre} d'articles	Description / Désignation
Investigator / Enquêteur	Date

Item No / Article n°	Time / Date Heure / Date	Relinquished by / Cédé par	Received by / Reçu par	Reason / Raison
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
		Print / Caractères d'imprimerie : Sign / Signature :	Print / Caractères d'imprimerie : Sign / Signature :	
Date compiled : Rempli le :		Compiled by : Rédacteur :		
Date reviewed : Révisé le :		Reviewed by : Révisé par :		



Evidence List / Pièces à conviction

File / Dossier		
File No N° de dossier	Report Serial N° de rapport	Date
Report Caption Rubrique		
Related Files Dossiers connexes		

Item Number / Pièce n°	Description / Désignation
1	
2	
3	
4	
5	
6	

Date compiled Rempli le :	Compiled by Rédacteur
Date reviewed Révisé le :	Reviewed by Révisé par

Exhibit Control List / Liste de contrôle des articles saisis



CASE NUMBER:

N° DE DOSSIER :

OFFENCE DATE:

DATE DE L'INFRACTION :

OFFENDER:

CONTREVENANT :

OFFENCE LOCATION:

LIEU DE L'INFRACTION :

INVESTIGATOR:

ENQUÊTEUR :

EX. NO. / ART. N°	EXHIBIT DESCRIPTION / DESCRIPTION DE L'ARTICLE SAISI	SEIZED / SAISIE			TURNED OVER TO / REMIS À :	STORAGE / ENTREPOSAGE		LAB / LABO.			
		LOCATION / ENDROIT	DATE TIME / HEURE	BY / PAR		AREA / ZONE	DATE TIME / HEURE	SENT / ENVOYÉ	REC'D BY / REÇU PAR	RET'D / RENDU	RESULT / RÉSULTAT



REQUEST FOR ACTIVATION OF SURGE CAPACITY TEAM (SCT)

SECTION A – To be completed by Regional Manager

1. Person requesting SCT activation

Name

Position title

Telephone number (999-999-9999)

Date (yyyy-mm-dd)

Time (hh:mm)

Region

- ☐ Atlantic ☐ Headquarters ☐ Ontario ☐ Pacific ☐ Prairie and Northern ☐ Quebec
- ☐ New Brunswick ☐ Alberta
- ☐ Newfoundland ☐ Manitoba
- ☐ Nova Scotia ☐ Saskatchewan
- ☐ Prince Edward Island

2. Program

3. Date of the occurrence that has led to the request (yyyy-mm-dd)

4. Location of the occurrence that has led to the request

5. Has the Functional Authority been consulted? ☐ Yes ☐ No If No, why?

Name

Telephone number (999-999-9999)

6. Does your Functional Authority support this request? ☐ Yes ☐ No

7. Synopsis of occurrence

8. Has the functional DG at HQ been notified? ☐ Yes ☐ No (if Yes, complete Name and Telephone number below)

Name

Telephone number (999-999-9999)

9. Has the requester contacted other regions for additional resources?

- ☐ Yes ☐ No
- ☐ No additional support is available. ☐ Requester will make those calls and report back.
- ☐ Specific skill set not present for assistance. ☐ This is an emergency and there is no time to call.
- ☐ Other: _____

10. Is this a ☐ High profile occurrence ☐ Penal occurrence ☐ Administrative investigation ☐ TBD ☐ Sensitive occurrence ☐ Unknown

11. What is required of the SCT? (check all that apply)

- ☐ SCT to assist with investigation, research or analysis
- ☐ SCT to assist with Judicial Authorizations
- ☐ SCT to assist with witness statements/interrogations
- ☐ SCT to assist with providing technical expertise
- ☐ SCT to assist with evidence collection
- ☐ SCT to work with Crown Counsel in building case
- ☐ SCT to assist with building of investigation file
- ☐ SCT to assist utilizing MCM protocol

Other

12. Who currently is the lead person/OPI for this occurrence?		
Name		Position title
TCC location	Telephone number (999-999-9999)	Email
13. Is there an investigation plan in place? <input type="radio"/> Yes <input type="radio"/> No (If Yes, please provide a copy to the Executive Director – Centre of Enforcement Expertise & Chief of Investigation Services)		
If No, please explain why		
14. Are other agencies involved? <input type="checkbox"/> OGD <input type="checkbox"/> Police <input type="checkbox"/> TSB <input type="checkbox"/> Public Prosecution Service of Canada/Local Crown <input type="checkbox"/> Other _____		
Has Legal Services Unit been contacted? <input type="radio"/> Yes <input type="radio"/> No		
If Yes, please provide details		
15. Where will the SCT be working from? <input type="checkbox"/> TBD		
Location		Telephone number (999-999-9999)
Address		
Primary Contact name for location		TC Connectivity? <input type="radio"/> Yes <input type="radio"/> No
If the deployment will be remote also complete SECTION C		

DEPLOYMENT OF SURGE CAPACITY TEAM

SECTION B – To be completed by the Chief Investigation Services Centre of Enforcement Expertise (CEE)

1. Has the CEE Executive Director been notified? <input type="radio"/> Yes <input type="radio"/> No		
2. Number of SCT members requested/or being sent	Names	
3. Name of SCT member designated as team lead		
4. What is the need of the caller/requester from the SCT? (check all that apply)		
<input type="checkbox"/> SCT to assist with investigation, research or analysis		
<input type="checkbox"/> SCT to assist with Judicial Authorizations		
<input type="checkbox"/> SCT to assist with witness statements/interrogations		
<input type="checkbox"/> SCT to assist with providing technical expertise		
<input type="checkbox"/> SCT to assist with evidence collection		
<input type="checkbox"/> SCT to work with Crown Counsel in building case		
<input type="checkbox"/> SCT to assist with building of investigation file		
<input type="checkbox"/> SCT to assist utilizing MCM protocol		
Other		
5. Who is responsible for all logistical details?		
Name		Telephone number (999-999-9999)
6. Where will the SCT be working from?		
Address		Telephone number (999-999-9999)
7. Frequency of status updates/briefings	/Day	8. Who will lead these briefings?
9. Who will attend these /briefings? (Functional Authority, OPI, CEE Chief, SCT Lead)		
10. Please provide contact name for TC Media Relations		
Name	Telephone (999-999-9999)	Email
11. Is this deployment remote? <input type="radio"/> Yes (if yes, complete Section C – Remote Deployment) <input type="radio"/> No		
12. Authority to proceed – Executive Director		
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div>_____</div> <div>_____</div> <div>_____</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>Financial Coding</div> <div>Signature</div> <div>Date (yyyy-mm-dd)</div> </div>		
13. Executive Director Comments		
14. Chief Investigation Services Comments		
<div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div>_____</div> <div>_____</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div>Signature</div> <div>Date (yyyy-mm-dd)</div> </div>		

REMOTE DEPLOYMENT

SECTION C – To be completed by the Chief Investigation Services Centre of Enforcement Expertise (CEE)

1. Will transportation to and from the site be arranged? ☐ Yes ☐ No if Yes, please provide details below

Details/Contact information

2. Will accommodations be arranged at remote site for SCT? ☐ Yes ☐ No if Yes, please provide details below

Details/Contact information

3. If TSB is responding, have they been contacted to see if possibility exist to have SCT share transport and accommodations with them? ☐ Yes ☐ No

4. Is there connectivity at the site (i.e. phone, internet)? ☐ Yes ☐ No

Have arrangements been made to address this? ☐ Yes ☐ No

Describe

5. Are there any special considerations at the site? (i.e. weather, potable water, terrain, wildlife, access to food/medical) ☐ Yes ☐ No

Please describe

What mitigation strategies need to be taken/observed?

6. Have arrangements been made for evidence storage? ☐ Yes ☐ No if Yes, please provide details below

Details/Contact information

Where is the evidence being stored? ☐ Police ☐ TC Office ☐ PSPC ☐ Other

Details/Contact information

SECTION D – MAJOR CASE MANAGEMENT

To be developed once MCM policy/procedure has been finalized.



Investigation Plan / Plan d'enquête

File/Dossier		
File No No de dossier		Date
Report Caption Rubrique		
Related Files Dossiers connexes		

Synopsis

Tasking / Tache

Elements of Offence(s) Matrix

Interviews / Entrevues	

Plan

Time Estimate / Estimation du temps

Cost / Finance

Date compiled date rempli	Compiled by redacteur
Date reviewed date révisé	Reviewed by révisé par

Written Statement / Déclaration Ecrite

File/Dossier		
File No No de dossier	Report Serial No de Rapport	Report Date Date de rapport
Report Caption Rubrique		
Related Files Dossiers connexes		

Privacy Notice / Avis de confidentialité

Transport Canada (TC) is committed to protecting the privacy rights of individuals and safeguarding the personal information under its control. "Personal information" is defined as any information, in any form, about an identifiable individual; refer to section 3 of the [Privacy Act](#) for further details regarding personal information. Personal information collected by TC is protected from disclosure to unauthorized persons and/or agencies subject to the provisions of the *Privacy Act*. Individuals have the right to the protection of and access to their personal information and to request corrections where the individual believes there is an error or omission. Individuals may contact the Department's Access to Information and Privacy Protection Division to request corrections. TC is responsible for oversight of Federal Transportation Acts and conducts investigations when non-compliance is detected. The information requested is required by the Department for the purpose of an investigation and will be used as evidence to support a finding. The information is collected under the authority of the [Department of Transport Act \(R.S.C., 1985, c. T-18\)](#), Section XXXX (*Aeronautics Act, Marine Transportation Security Act, Railway Safety Act, International Bridges and Tunnels Act, Transportation of Dangerous Goods Act, Canada Shipping Act, 2001, Navigation Protection Act, Motor Vehicle Safety Act*).

Provision of the information requested in this document is voluntary and you may, without prejudice, decline to respond. Should you decide to consent, it is important to know that submission of your information constitutes consent to the collection and use of your personal information. Your personal information may be shared with other government departments (Municipal, Provincial, and Federal) for the purpose of their investigation into this matter. Your personal information will not be used for any secondary purpose without first obtaining your explicit consent. The personal information collected will be retained for ten years commencing when there is no further action on the file (timeframe) and disposed of by Transport Canada. Personal information will be protected under the provisions of the *Privacy Act* and is described in TC's Personal Information Bank TC XXX XXX, which is detailed in TC Info Source Chapter at <http://www.tc.gc.ca/>. Individuals have the right to file a complaint with the [Privacy Commissioner of Canada](#) regarding the institution's handling of their personal information.

☐ By providing your personal information, you acknowledge that you have read and understood this statement and consent to the Department's collection, use and disclosure of your personal information.

Name (PRINT): _____

Signature: _____

Transports Canada (TC) s'engage à protéger les droits relatifs à la vie privée des personnes ainsi que les renseignements personnels qu'il détient. Les « renseignements personnels » se définissent comme des renseignements, quels que soient leur forme et leur support, concernant un individu identifiable; l'article 3 de la [Loi sur la protection des renseignements personnels](#) peut être consulté pour obtenir plus de détails sur les renseignements personnels. Les renseignements personnels recueillis par TC sont protégés contre la divulgation à des personnes ou à des organismes non autorisés en vertu des dispositions de la *Loi sur la protection des renseignements personnels*. Toute personne a droit à la protection de ses renseignements personnels et à leur accès, et a le droit de demander que des corrections soient apportées à ses renseignements personnels, si elle estime qu'il y a une erreur ou une omission. Pour apporter des modifications, vous pouvez communiquer avec la Direction de l'accès à l'information et protection des renseignements personnels du Ministère. TC est chargé de surveiller les lois fédérales en matière de transport et il mène des enquêtes quand des non-conformités sont décelées. Les renseignements demandés sont exigés par le Ministère à des fins d'enquête et ils serviront de preuve pour appuyer une constatation. Les renseignements sont recueillis en vertu de la [Loi sur le ministère des Transports \(L.R.C. \(1985\), ch. T-18\)](#), article XXXX (*Loi sur l'aéronautique, Loi sur la sûreté du transport maritime, Loi sur la sécurité ferroviaire, Loi sur les ponts et tunnels internationaux, Loi sur le transport des marchandises dangereuses, Loi de 2001 sur la marine marchande du Canada, Loi sur la protection de la navigation et la Loi sur la sécurité automobile*).

La communication des renseignements demandés dans le présent document s'effectue sur une base volontaire; vous pouvez refuser de répondre, sans que cela ne vous porte préjudice. Si vous décidez de consentir, il est important de savoir que la soumission de vos renseignements personnels représente un consentement à la collecte et à l'utilisation de vos données personnelles. Vos renseignements personnels peuvent être communiqués à d'autres ministères gouvernementaux (à l'échelle municipale, provinciale et fédérale) pour effectuer les enquêtes dans ce dossier. Vos renseignements personnels ne serviront à aucune fin secondaire sans votre consentement explicite. Les renseignements personnels recueillis seront conservés pendant 10 ans à compter du moment où plus aucune action n'est entreprise dans le dossier (délais) et ils seront éliminés par Transports Canada. Les renseignements personnels seront protégés conformément aux modalités de la *Loi sur la protection des renseignements personnels*, et des renseignements à ce sujet sont fournis dans le dépôt de renseignements personnels de Transports Canada TC XXX XXX, dont il est question dans l'Info Source de TC, au <http://www.tc.gc.ca/>. Toute personne a le droit de porter plainte auprès du [commissaire à la protection de la vie privée du Canada](#) concernant le traitement de ses renseignements personnels par une institution.

☐ En fournissant vos renseignements personnels, vous reconnaissez que vous avez lu et compris le présent énoncé de confidentialité et vous consentez à ce que vos renseignements personnels soient recueillis, utilisés et partagés par le Ministère.

Nom (en caractères d'imprimerie) : _____

Signature : _____



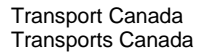
Name Nom		Given Names Prenoms	
DOB DDN	<input type="checkbox"/> Male / Mâle <input type="checkbox"/> Female /Femelle		
Tel No No Tel	Work Travail	Residence	
Address Adresse			
Pass-ID no			

Location Endroit	Time/heure/date:
TC Personnel Pers du TC	

Audio	Yes Oui		No Non		Eqpt & Serial No Eqpt & No de Serie		Speed Vitesse
Video	Yes Oui		No Non		Eqpt & Serial No Eqpt & No de Serie	Lens Lentil	Speed Vitesse

[illegible]

Signature	Date/heure/time
Witness/ Témoin	Witness/ Témoin



File/Dossier

File No
No de dossier

Report Serial
No de Rapport

Date _____

Report Caption	Rubrique
----------------	----------

Name	Nom
------	-----

[illegible]

Signature

Date/heure/time



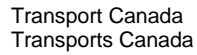
Witness/ Témoin

Written Statement / Declaration Ecrite
(Continued/Suite)

File/Dossier		
File No No de dossier	Report Serial No de Rapport	Date
Report Caption Rubrique		

Witness Identification / Témoin d'identification	
Name	
Nom	

[illegible]



Written Statement / Declaration Ecrite
(Continued/Suite)

[illegible]



Signature	Date/heure/time
Witness/Témoin	Witness/ Témoin

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Chapter V

Forms and Templates

5.8 Triage Checklist for TATC Cases

TRIAGE CHECKLIST FOR TATC CASES

File name: _____

TATC file number: _____

TC file number: _____

Decision maker: _____

Potential witnesses: _____

Estimated number of hearing days: _____

AMP ☐

Certificate Action ☐

Other ☐ Specify (e.g. medical): _____

Advice previously provided by DOJ on file? YES or NO

Alleged violation/Regulatory requirement not met:

Case Synopsis:

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Chapter V

Forms and Templates

5.8 Triage Checklist for TATC Cases

If any *one* of the following criteria is identified by the triage, Justice to be consulted about the case, including TATC representation. If Justice is not representing the Minister, the case will be managed and presented by TC HQ CPOs

Yes	No	Criteria
		Accident or incident that is currently the focus of an inquiry, inquest, TSB investigation
		Actual or likely continuing or ongoing media attention (to obtain assessment from Communications)
		Issues of jurisdiction
		Actual or likely civil litigation (likely to be determined by Justice) in which TC is a party or likely party
		Questions of law such as constitutional questions or very complex legal arguments
		Significant contradictory evidence in the file

If any *two or more* of the following criteria are identified by the triage, Justice to be consulted about the case, including TATC representation. If Justice is not representing the Minister, the case will be managed and presented by TC HQ CPOs.

Yes	No	Criteria
		Lawyer representing applicant – Check with TATC Registrar
		Suspension/cancellation of AMO or AOC
		High number of allegations (10 or more charges)
		Concerns with inspection/investigation
		Applicant is TC employee or related to TC employee
		Significant effect on departmental policies or programs

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Chapter V

Forms and Templates

5.8 Triage Checklist for TATC Cases

Yes	No	Criteria
		Lack of clarity or confusion with the regulation being enforced/argued
		High profile applicant
		If high number of witnesses (5 or more)
		If expert witness needed
		If witness is from foreign country, or from another department/agency
		Second level of review or appeal on same file
		Conflict of interest with the Office of Primary Interest*

"If none of the criteria above is identified by the triage, HQ will decide if the case is to be managed and presented by an HQ CPO or by a regional CPO".

Please provide comments if any of the criteria are marked as a YES, or if you left any blank:

Triage completed on**: _____
(DD/MM/YYYY)

Triage completed by _____
TC HQ CPO (Print name)

(Signature)

Consulted DOJ counsel _____
(Print name)

(Signature)

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Chapter V

Forms and Templates

5.8 Triage Checklist for TATC Cases

DECISION:

DOJ representation

☐

TC HQ CPO representation

☐

TC Regional CPO representation

☐

*For greater certainty, conflict of interest does not include cases where the decision maker (e.g. the officer who issued a Notice of Violation) and the regional CPO is the same person.

**Triage should be reassessed if circumstances change significantly.



Signature	Date/heure/time
Witness/Témoin	Witness/ Témoin

Transport Canada - Centre of Enforcement Expertise

Chapter VI Background Papers **6.0 Foreword**

Chapter VI is composed of reference documents that may be consulted to provide further background on specific requirements, processes or scenarios. This material includes such topics as a comparison table of authorities for Transport Canada staff, the distinctions between inspections and investigations and various statutory authorities that inform Transport Canada's enforcement regime.

Transport Canada - Centre of Enforcement Expertise

Chapter VI

Background Papers

6.1 Legislation and Authorities

This section contains a link to two tables, located in separate tabs of the same document (RDIMS 9992278), that identify the limitations of officer authority as well as the current authorities and enforcement tools provided in various pieces of TC-administered legislation, as well as the provisions that establish those authorities.

The first tab contains an Authorities Matrix that allows for a comparison across the programs of the different authorities provided by the relevant Acts to persons delegated by the Minister of Transport to enforce those Acts. It is divided into three main sections – Common Pre-Rubicon Inquiries, Common Post-Rubicon Inquiries, and Enforcement Actions.

The reference to the “rubicon” originates from a paper prepared by TC Legal Counsel that uses the concept of “crossing the rubicon” (i.e. making a transition from one point to another from which there is no return) to describe the transition between the use of inspection powers to verify compliance or conduct an administrative investigation to the use of powers to conduct a penal investigation.

The second tab contains a list of the various Acts that the Department enforces and identifies the individual provisions in those Acts that provide officers with the various powers, including the consideration of enforcement responses.

Transport Canada - Centre of Enforcement Expertise

Chapter VI

Background Papers

6.2 Generic Oversight, Enforcement and Adjudication Continuum

Generic Oversight, Enforcement and Adjudication Continuum

